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Official Report of Debates (Hansard)

Tuesday 3 December 2013

Journal des débats (Hansard)

Mardi 3 décembre 2013

Standing Committee on Justice Policy

Members' privileges

Comité permanent de la justice

Privilèges des députés



Chair: Shafiq Qaadri
Clerk: Tamara Pomanski

Président : Shafiq Qaadri
Greffière : Tamara Pomanski

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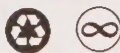
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 3 December 2013

Mardi 3 décembre 2013

The committee met at 1500 in room 151.

MEMBERS' PRIVILEGES

HON. KATHLEEN O. WYNNE

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochaine représentante, députée de l'Assemblée législative de la circonscription de Don Valley-Ouest et notre 24^e premier ministre de l'Ontario, the honourable Kathleen Wynne. Premier Wynne, I welcome you back to the justice policy committee and invite you to please be sworn in by our able Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Hon. Kathleen O. Wynne: I do.

Le Président (M. Shafiq Qaadri): Première ministre Wynne, comme vous le savez, vous avez cinq minutes pour vos remarques introductoires. Je vous invite à commencer maintenant.

Hon. Kathleen O. Wynne: Merci. Good afternoon, everyone. I'm pleased to be here with you again.

I'm going to start by repeating what I told the committee in April. I was not involved in the decision to relocate the Oakville plant. Eight months after the decision was announced, on July 29, 2011, as Minister of Transportation, I, along with three other cabinet ministers, signed a cabinet minute that authorized the Ministry of Energy to formalize settlement discussions with TransCanada and to enter into an agreement under the Arbitration Act should negotiations fail. This was reported to cabinet at a meeting that I attended on August 10, 2011.

On October 3, 2011, I was present at a cabinet meeting, which included a report-back from treasury board on the negotiation mandate that had been approved from TransCanada. With respect to Mississauga, I learned about the plans to relocate the plant from media reports.

On November 21, 2011, I signed a cabinet document along with three other ministers approving a \$10-million settlement with Eastern Power concerning litigation costs over the Keele Valley project.

On November 24, 2011, I attended a cabinet meeting with a high-level update on the ongoing discussion with the OPA and Eastern Power.

On May 30, 2012, I was also present at a cabinet meeting where the report back came on the treasury board negotiation mandate, which had been approved to settle with EIG. This included a directive from the Ministry of Energy and the OPA to continue their settlement discussions with Greenfield.

Finally, I attended a cabinet meeting on August 15, 2012, where it was reported that the treasury board order for the settlement on the Keele Valley issue had been approved.

Just before I take your questions, I want to comment on three important things.

First of all, in 2010 and 2011, the government listened to the advice of experts and began to build gas-fired power plants in Mississauga and Oakville. Over time, it became evident that the concerns of the residents in those communities were legitimate, and the government listened to those concerns and cancelled those power plants for relocation elsewhere. All three political parties agreed with those decisions.

Secondly, while estimates vary over what the relocations will cost over the next 20 years, all of them are unacceptably large. Money is too tight for tax dollars to be spent in any way that is not productive. As a member of the cabinet under which this happened, I have taken full responsibility and I have apologized. We are ensuring that this never happens again by improving the siting of energy infrastructure and introducing new rules governing political staff.

Third, since day one, I have been committed to being open and transparent about the relocations. I wrote to the Auditor General, immediately struck this committee and offered all documents. To date, I believe that more than 244,000 documents and emails have been provided, including 30,000 from the Premier's office. I promised to be open and to open the government up completely, and we have done so, to an unprecedented degree.

As Premier, I have accepted full responsibility, I have apologized for the expense of these relocations and I've put in place new rules to ensure that this does not happen again.

Our government is focused on moving forward. Yesterday we released Ontario's new long-term energy plan. It's a balanced approach, providing clean, reliable and affordable power. Going forward, we have a very clear choice: We can choose to continue this narrow focus on the past, with no end in sight, or we can work

together and focus on what we were elected by the people of Ontario to do.

I've heard from Ontarians—I have heard from lots of them—and they want us to focus on our economic plan to drive jobs and growth, and that is what I am doing. We cannot change the past, but what we can do is look forward, and this means working together to improve our future.

I'm happy to answer your questions again.

Le Président (M. Shafiq Qaadri): Merci, première ministre Wynne. Maintenant je passe la parole à M. Bisson. Vingt minutes.

Mr. Gilles Bisson: Merci beaucoup, monsieur le Président.

Welcome to our committee, Madam Premier. We called you here because the testimony that you gave the last time you were here was not exactly in sync with what the arbitrator had to report in regard to the report that the arbitrator gave on the gas plant settlement.

Interjection: The Auditor General.

Mr. Gilles Bisson: The Auditor General; excuse me. You had said in your last round of testimony that you insisted that by signing the arbitration agreement, you weren't responsible for driving up the cost. The auditor has a very different view of that, and says that is central to what pushed the cost up, because the arbitration agreement essentially says, "Let's take away the protection that the government had to protect itself from high settlement costs," and instead, you wrestled yourself to the ceiling. So do you maintain that testimony that you had here last time, that in fact your signing that document did not lead to a high settlement?

Hon. Kathleen O. Wynne: Let me just repeat some of what I just said, which is that I was part of a cabinet that made a decision vis-à-vis the relocation of the gas plant. There was a necessity for negotiation as part of the implementation of that, and so my signing of that document—which I believe your colleague has acknowledged was part of a process that one would expect of a member of cabinet that had made a decision—did not mean that I had access to chapter and verse of the parameters or the discussion that was going to or had taken place vis-à-vis the negotiation with the company.

Mr. Gilles Bisson: But my question—

Hon. Kathleen O. Wynne: So I'm just challenging the notion that there was a direct link there. We were working to avoid litigation, and the advice that we had was that avoiding litigation was the way to go, that that was in the best interests of the people of Ontario, and so that's why the decision was made to enter into that negotiation. I was part of the cabinet that made that decision, and so I—

Mr. Gilles Bisson: But, Premier—

Hon. Kathleen O. Wynne: —signed the document.

Mr. Gilles Bisson: But, to be fair, I asked you a question. The first question is, you said that your signing that document was not related to the high cost of settlement. The auditor has a very different view of that, in fact says that it's central. So do you maintain the original

testimony, that it wasn't your fault, that signing the document didn't lead to the high cost, or are you prepared to change your testimony?

Hon. Kathleen O. Wynne: Look, I accept the findings of the Auditor General, and as I've said before, I was part of a cabinet that made a decision vis-à-vis relocating a gas plant. There was a negotiation that needed to take place, as we understood it, in order to avoid litigation, and I signed that document as part of a cabinet walk-around. I understood that it was part of the process whereby we'd enter into negotiation, but I did not have access to the details of that discussion. So—

Mr. Gilles Bisson: I'll get to the details in a minute.

Hon. Kathleen O. Wynne: —I accept the findings of the Auditor General.

Mr. Gilles Bisson: Okay. So that means to say your original testimony, then, wasn't spot on?

Hon. Kathleen O. Wynne: No, I'm not saying that. I'm saying I accept the findings of the Auditor General and I signed a document as part of a cabinet—

Mr. Gilles Bisson: But, Premier, to be clear, you were before committee and gave testimony. You said, "My signing of the document that led to the arbitration settlement didn't increase the cost." The arbitrator said quite the contrary. So you're now saying that your previous testimony wasn't spot on?

Hon. Kathleen O. Wynne: My signing of the document and what happened at the negotiation table and what the final settlement was are—they're not one and the same thing, because there was no final agreement when I was signing that document. It was the initiation of a negotiation, and that was part of the process of relocating the gas plants. So my signing was part of that process of implementing the relocation of the gas plants.

Mr. Gilles Bisson: We'll get to what's in the document, but essentially what you're saying is that you accept the auditor's report, which essentially means—

Hon. Kathleen O. Wynne: Well, I've said that many times, that I accept the auditor's report.

Mr. Gilles Bisson: Okay, but I want to be clear: It puts into question your previous testimony. Shelly Jamieson—

Hon. Kathleen O. Wynne: Just a sec. I don't accept your contention.

Mr. Gilles Bisson: And I don't accept yours. That's fair.

Hon. Kathleen O. Wynne: I accept the auditor's report, and I've said why I do.

Mr. Gilles Bisson: That's fair, and I don't accept yours.

Shelly Jamieson said at the time of the arbitration framework, when it was being contemplated, that the government knew they had a good understanding of the contract and its protections and the protections the government had arbitrarily given up. In fact, Colin Andersen echoed that, as well, to the cabinet.

So when you say you didn't know what the cost was, clearly the evidence that we now have said that both

Shelly Jamieson and Colin Andersen call into question that the cabinet didn't know what the costs were.

So, to that, would you at this point say what you said last time is again not spot on?

Hon. Kathleen O. Wynne: Well, what I would say to that is that the reason that I thought it was important that we have the Auditor General look at the situation in Oakville was that there were many numbers being bandied about. I said that in my remarks at the last committee hearing when I said that as recently as the day before or a couple of days before I came to the committee the last time I'd been given another document that had another set of numbers in it. The Auditor General has come in with a different set of numbers.

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There has been a lot of discussion about exactly what the numbers were, Mr. Bisson. From my perspective, it was very important that we get the Auditor General to come in because there was no clarity about exactly what the numbers were.

Mr. Gilles Bisson: No, there was a fair amount of clarity, because according to Shelly, since you appeared—the testimony that we have from Shelly Jamieson and Colin Andersen says that cabinet knew that it was giving up its protections to higher settlement costs by signing the arbitration agreement. So clearly, cabinet knew that by signing this, it was going to lead to higher costs than if you didn't sign it.

Hon. Kathleen O. Wynne: What we were doing was we were entering into a negotiation—and I'm just going to read a couple of the pieces of advice that we were given and some of the quotations that demonstrate why we believed—

Mr. Gilles Bisson: Chair, can she do that on Liberal time?

Hon. Kathleen O. Wynne: No, no. This is—

Mr. Gilles Bisson: No, seriously. She can read this on—

Hon. Kathleen O. Wynne: This is in answer to your question, because it's relevant to why we were entering into the negotiation in order to avoid litigation. John Kelly—

Mr. Gilles Bisson: Did Shelly Jamieson and Mr. Colin Andersen not explain to cabinet that signing that arbitration agreement was getting rid of your protections that you had under the contract?

Hon. Kathleen O. Wynne: The advice that we got was that entering into a negotiation in order to avoid litigation was the responsible thing to do. If you don't want me to read the quotes—I mean, there's testimony that's been given here. John Kelly, counsel to the Ministry of the Attorney General, said, "In my experience, after 40 years of litigating, if you can avoid litigation, you should. It's a process that's fraught with risk." Jim Hinds, OPA chair: If the cancellation "was done in a way that showed disregard for contractual rights, there's ... an opportunity that we could get sued for punitive damages...."

The threat of litigation was hanging over us and that's why we entered into a negotiation.

Mr. Gilles Bisson: You threw in the towel and you wrestled yourself to the ceiling and the OPA said—in fact, they were upset that you were taking away the protections that you had under the contract, and all that was known when you signed the arbitration agreement. Again, I ask you the question. What you said when you were here last time is quite different from what we found out the facts are as they were given in testimony to this committee. So I ask the question once again: When you signed the arbitration agreement—do you now state again that you didn't know that it was going to lead to higher costs or, in fact, do you now say it was going to lead to higher costs?

Hon. Kathleen O. Wynne: We entered into the negotiation in order to attempt to avoid litigation. That is why we did that and that was the advice that we were given. Our understanding was—and nobody knows what the cost of litigation could be or would have been over time. We believed that it was in the best interests of the people of Ontario, given that we were relocating these gas plants—the gas plant—that entering into a negotiation and not risking litigation was the right thing to do.

Mr. Gilles Bisson: Well, you can try to say that, but the facts, as told to this committee from Shelly Jamieson, Colin Andersen and others from the OPA, say that you were giving up your protection, which was going to lead to a higher cost and you guys knew that when you signed the arbitration agreement.

I'm going to ask you the question another way: Did you know that the arbitration framework you approved clearly favoured TCE?

Hon. Kathleen O. Wynne: I just need to be clear: You are not talking at all about the reality that the option could have been litigation. There were risks in this situation. This was not a risk-free situation for the government. The risk, however, of litigation was, we believed, greater in terms of the interests of the people of Ontario than the risk of entering into a negotiation. That is the decision that we made and—

Mr. Gilles Bisson: But you didn't answer my question. Were you aware—

Hon. Kathleen O. Wynne: The risk of a higher cost was there on both options.

Mr. Gilles Bisson: I've asked you a question. The question is, when you signed the arbitration agreement, were you aware that it was removing the protections that you had as a government towards a settlement of higher cost?

Hon. Kathleen O. Wynne: I have said clearly that I was aware that this was what we needed to do in order to implement the decision of relocating the gas plants: enter into a negotiation in order to avoid litigation. That's what I was aware of. Did I know chapter and verse about what was going to be discussed at the negotiation table? No, I did not.

Mr. Gilles Bisson: Everybody else kind of knew that it was going to be a higher cost before all of the facts came out, so why is it that you didn't know? You had more information than most of the members on this committee did. So my question to you is, did you not ask—

Hon. Kathleen O. Wynne: I said the costs were unclear.

Mr. Gilles Bisson: When somebody brought you this cabinet document to sign—was there anybody there when you signed it? Was there any kind of a briefing involved?

Hon. Kathleen O. Wynne: I've told you. I've said that I understood that this was part of the implementation of the decision to relocate the gas plants, that we were entering into a negotiation. But as with all negotiations, the details of the parameters, and what the detailed discussions were going to be, were not part of a briefing. I knew that we were working to avoid litigation, that that was the track that we had adopted.

Mr. Gilles Bisson: But Shelly Jamieson, Colin Andersen and others told cabinet that in fact you were removing the protections that the government had towards a higher settlement. So my question is, did you know that, and did you ask any questions to that effect when you signed the cabinet document?

Hon. Kathleen O. Wynne: As I've said, we were working to avoid litigation. Again, this was a situation that was obviously fraught with unknowns. The reason that I asked the Auditor General to look at the situation was because there were many numbers that were being talked about. We needed some certainty. We needed to get her analysis—his analysis, at the time. That's why we have the Auditor General's report.

You've had a lot of documentation, tens of thousands of pieces of paper, so you've got all the information. I've told you what I know. I've told you what my role was.

I really believe that it was the decision to avoid litigation that was driving those decisions.

Mr. Gilles Bisson: Some decision. You drove up the price to \$1.1 billion. Listen, the question—

Hon. Kathleen O. Wynne: Well, there's nothing like 20/20 hindsight.

Mr. Gilles Bisson: Listen, the question is, when you were signing the cabinet document, did you ask any questions? Did you say, "What does this mean to the ratepayers in the end?" Did you ask those questions?

Hon. Kathleen O. Wynne: What I'm telling you is that avoiding litigation was, we believed, the responsible avenue to take.

Mr. Gilles Bisson: But you had protections—

Hon. Kathleen O. Wynne: That was about avoiding costs.

Mr. Gilles Bisson: But you had protections under the agreement, and you were signing away those protections by signing this cabinet document. Didn't it strike you as passing strange that the government was essentially putting everything in the favour of TCE and not in the favour of the ratepayers?

Hon. Kathleen O. Wynne: I believe I've answered this question a number of times.

Mr. Gilles Bisson: All right. Well, then, let me come at it this way: If you didn't know, you should have known, and it calls into question your judgment when it

came to signing on that document, wouldn't you say? Why didn't you—

Hon. Kathleen O. Wynne: I've answered that question. I've said that I was part of a cabinet that was implementing a decision to relocate a gas plant and to avoid litigation.

Mr. Gilles Bisson: Were you concerned at all about what this meant to the Liberal Party?

Hon. Kathleen O. Wynne: You know, that was not part of my personal calculation. I mean, my personal calculation was, we'd made a decision that was responding to concerns in a community.

What's critical for me in my role now is that we make sure that we have a better process in place. That's why implementing the recommendations of the ISO and OPA report are very important to me.

Mr. Gilles Bisson: But you were key to the process that led to a higher cost, so I ask you the question: You were campaign co-chair for the Liberal Party at the time. Was any of your consideration in making this decision to try to keep this issue under the radar in order not to have this rise up before a provincial election? Was that part of your consideration?

Hon. Kathleen O. Wynne: I was one of two vice-chairs of the campaign. I was not integral to the timing of the decision-making. I've told you that I was part of a cabinet that made this decision, and it was in response to community concerns. I've said that a number of times.

Mr. Gilles Bisson: But I ask you the question again: As co-chair of the Liberal campaign, was that on your mind, what it meant to the Liberal Party? Because clearly, this was about saving some Liberal seats, so was there political consideration in signing that document?

Hon. Kathleen O. Wynne: Well, this was a decision, and this was a position, that had been taken by all parties in the Legislature and all parties in the campaign.

Mr. Gilles Bisson: No, no, no, no. Just to be clear, it's not the position—

Hon. Kathleen O. Wynne: Well, it was.

Mr. Gilles Bisson: No, it wasn't. It was not the position of—

Hon. Kathleen O. Wynne: Well, it actually was—

Mr. Gilles Bisson: Listen, I was co-chair—

Hon. Kathleen O. Wynne: —and we have—

Mr. Gilles Bisson: Madam Premier, I was co-chair of our campaign. I took part in the morning meetings. Definitely, on this one, we said, "We're not going to start scrapping contracts, any more than we're going to scrap contracts with Samsung without knowing what the cost is." But let's not—

Hon. Kathleen O. Wynne: My understanding is that you had candidates who were out saying that you were going to cancel the gas plants.

Mr. Gilles Bisson: And you had candidates who said things as well, so I guess we can exchange a list. But the point is—

Hon. Kathleen O. Wynne: Well, okay, but it was pretty much well agreed among all the parties.

Mr. Gilles Bisson: To get to the point, I guess what I'm asking you is, when you finally did sign that docu-

ment that allowed the arbitration process to go forward, are you maintaining that there was no political consideration on the part of yourself or others in government in order to keep this issue under the radar?

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Hon. Kathleen O. Wynne: Our calculation was that the concerns of the community should have been taken into account, that this was a decision that needed to be made. I've said before that it would have been better had the decision been made earlier. It would have been better had we listened to the community and had we had a different process in place earlier. That's why we're changing the process. I've said that many times. I've said it in the House, and I've said it here.

Mr. Gilles Bisson: But the auditor also said that, in fact, the Liberal government was desperate to keep TCE down low; in other words, under the radar. That's the auditor's own words. Why? Because otherwise the government would be in a situation where the public would find out a heck of a lot sooner what the costs were, and that would have been bad for the timing of the election. If the auditor was able to make that connection, why weren't you? Or did you do it, and you're just not telling us?

Hon. Kathleen O. Wynne: I've said what my motivation was in signing the document. I've said that I was part of the cabinet; we were making a decision about relocating a gas plant. I've said that we were working to avoid litigation, which was the advice that we had been given. I believe that that was the right thing to do given the situation. Had we made the decision earlier, had we listened to the community, then the outcome would have been very different.

Mr. Gilles Bisson: So is it fair to say that you had more concern for the fate of the Liberal Party than the ratepayers in signing that document?

Hon. Kathleen O. Wynne: No, that's not right. That's not accurate, and I don't accept it.

Mr. Gilles Bisson: Okay, I guess we'll agree to disagree.

Let me ask you in regard to the issue of the estimates committee. The estimates committee had requested documents. We all know that, in fact, committees have the ultimate right to ask for those documents. Was there any discussion at cabinet or at caucus in regard to the request by the estimates committee to release the documents?

Hon. Kathleen O. Wynne: I don't have any recollection of a discussion of estimates committee. I don't have any recollection of that. I've said what—

Mr. Gilles Bisson: So while you were in cabinet, in the time around May 16 until about August, do you recall any discussions around the request by the estimates committee for the release of documents? Was that discussed at cabinet?

Hon. Kathleen O. Wynne: I don't recall, and I think you've got all the cabinet minutes. I think you've got all the information from that time period.

Mr. Gilles Bisson: No, actually we don't, but that's a whole other issue.

Hon. Kathleen O. Wynne: I think you do. Mr. Chair, is that—

Mr. Gilles Bisson: That's the assertion.

Hon. Kathleen O. Wynne: I think that those cabinet minutes are all in your possession.

Mr. Bas Balkissoon: That's the assertion, that we do, but we'll come back to that at another date.

My question is, was there any discussion, and are you knowledgeable of any discussion, in regard to the refusal by the government to release those documents to the estimates committee? Did you talk about it at cabinet or at caucus?

Hon. Kathleen O. Wynne: As I said, I don't have any recollection of that, and I believe you have all of the cabinet minutes from that time period.

Mr. Gilles Bisson: Okay, to the record and to the testimony: We have a couple of cabinet ministers who, in fact, said there was discussion at cabinet.

Hon. Kathleen O. Wynne: Well, I'm telling you that I don't have a specific recollection. But you have the cabinet minutes, so you have that information.

Mr. Gilles Bisson: The point is, is everybody having collective amnesia in regard to that discussion?

Hon. Kathleen O. Wynne: Again, you have the cabinet documents. I've told you my involvement in this issue. I'm happy to go through that chronology again, if you'd like.

Mr. Gilles Bisson: So you're saying that you do not remember any discussions at cabinet or at caucus in regard to the refusal to release the documents to the estimates committee.

Hon. Kathleen O. Wynne: I do not recall a specific discussion. I apologize if that specific discussion on the estimates committee has slipped my mind. You've got the minutes of the cabinet meetings, and I have told you what my involvement is.

Mr. Gilles Bisson: As I said, in testimony, we have a couple of cabinet ministers, in fact, who say there were those discussions.

The other question is, the government moved with fury to try to delete emails and documents as part of their ability to not have some of this information—

The Chair (Mr. Shafiq Qaadri): One minute

Mr. Gilles Bisson:—surface later. Were you aware of any of that going on? Were you party to any discussion about the deletion of emails, the deletion of documents?

Hon. Kathleen O. Wynne: No, I was not.

Mr. Gilles Bisson: Did you have something?

Mr. Peter Tabuns: When—

Hon. Kathleen O. Wynne: Just to that point, we have changed the procedures in the Premier's office and across government.

Mr. Peter Tabuns: So how bad was it in government when you came in? We found that you had a chief of staff in the Ministry of Energy who testified he deleted everything. The Premier's chief of staff testified he deleted everything every day. In fact, he went out to get access codes so he could delete. He questioned the head of IT about how he could make sure things were wiped out. How bad were things when you became Premier?

Hon. Kathleen O. Wynne: I've said repeatedly that we've changed the protocols around retention of information; we've done training among staff. The privacy commissioner is quite satisfied that we've made changes that will make the system work better.

Mr. Peter Tabuns: What sparked that—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns and Mr. Bisson.

Just before I offer the floor to the government side, our official verdict, I guess, on the issue of the cabinet documents is that everything that Cabinet Office has released, you have. Whether that is actually everything probably requires some research.

With that, I now offer Mr. Delaney.

Mr. Bob Delaney: Just to clarify what the Chair just said, Cabinet Office has released everything we've asked for. Correct?

The Chair (Mr. Shafiq Qaadri): Correct.

Mr. Bob Delaney: Thank you.

Mr. John Yakabuski: That's not what you said.

Mr. Bob Delaney: Premier, just before we begin, I'm just wondering if there's anything you'd like to clarify either from the previous series of questions or perhaps add to the record today?

Hon. Kathleen O. Wynne: No, I think I'm good so far.

Mr. Bob Delaney: Okay, thank you. I want to ask you about something that you had said when you first appeared at committee, what now seems like a long time ago. You said that you had supported the decisions to relocate the two gas plants. At that time, the end of April, April 30, the report from the Auditor General on Oakville had not been released. Would you please review for the committee—encapsulate your involvement in the Oakville decision?

Hon. Kathleen O. Wynne: Well, as I've said, my role was not as the Minister of Energy, was not as someone who was involved in the day-to-day discussion around the relocation of that plant—or the siting of the plant, for that matter. I was part of cabinet at the time.

My understanding was that a decision had been made based on expert advice, the site had been selected and there was a lot of community reaction. There was a lot of community pushback on the siting of the plant, and certainly there was a lot of concern about the location. My involvement was to hear that, to understand that and, as we worked towards making the decision, to understand that, really, we hadn't taken into account the concern of the community. Then the decision was made.

I was involved in a cabinet walk-around, in which, as one of four ministers, I was implementing a decision that we had agreed on to relocate the plants. We were doing that to enter into a negotiation and to avoid litigation.

Mr. Bob Delaney: Okay, thank you. In fact, between your last visit and now, Ben Chin appeared before the committee and said that by the end of 2010, the OPA realized that they didn't actually need the energy that would have been produced by both gas plants.

Hon. Kathleen O. Wynne: Right.

Mr. Bob Delaney: Last week, Shelly Jamieson, the former secretary of cabinet, appeared before the committee for a second time. She confirmed what you've just said to the committee. Again, to read a little quote from her transcript, "I would say it would be a pattern in the province of Ontario to look to avoid litigation where we can. Litigation is not a pleasant exercise. So there would be several times that things would come into Cabinet Office when they had been unresolved, and it looked like we were tracking towards litigation. We might ask ourselves, 'Is there something else we could do to avoid that situation?' At that point, I saw this as the same as those other instances."

When David Lindsay, who was the former Deputy Minister of Energy, was here, he had this to say about litigation: "If you have a contract and you don't honour the contract, the party on the other side can sue you for breach of contract and the damages would be all the benefits they were hoping to procure."

In fact, John Kelly, who serves as a counsel to the Attorney General's office, stated when he testified words that I think you've paraphrased, that in his "40 years of litigating, if you can avoid litigation, you should. It's a process that's fraught with risk."

Premier, is it your understanding that, as a government, wherever we can avoid litigation, we do try to avoid litigation?

Hon. Kathleen O. Wynne: Exactly. It is, I guess, somewhat easier to look back and say, "Well, had you done one thing or the other, the outcome would have been better." At the time, we believed that avoiding litigation was the best course of action, and as I have already said, there was risk associated with both paths, but we believed that the greater risk would have been with litigation and so we entered into a negotiation.

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I think the other reality is that I believe we have sited 19 gas plants successfully. The other two, these two, were not sited successfully, and there was an enormous amount of community pushback. And so, again, I really want us to have a better process in place, where we take the community's advice and perceptions and opinions into account, and we engage the community in a different and better way at the outset, so that we are not in a situation where we're having to backtrack and repair relationships and undo damage. That's why it's important that we have a new process going forward.

Again, it's easy to look back and say, had we known that at the time, had we made different decisions—yes, had we made different decisions at the time, had we gotten on this earlier, had we responded earlier to communities' concerns, then we wouldn't be having this discussion today.

Mr. Bob Delaney: And, of course, in fact, both the Mississauga and Oakville gas plants were subsequently re-sited to willing host communities.

Hon. Kathleen O. Wynne: Exactly.

Mr. Bob Delaney: There's been a little bit of discussion about that cabinet walk-around. Just for clarity, your

cabinet portfolio at the time the agreement was negotiated was?

Hon. Kathleen O. Wynne: Municipal affairs and housing, and aboriginal affairs. I'm sorry, there were a number of them. Transportation was—I was Minister of Transportation before that, yes.

Mr. Bob Delaney: And although you signed the document—

Hon. Kathleen O. Wynne: So there were two—

Mr. Bob Delaney: Sorry, go ahead.

Hon. Kathleen O. Wynne: As said in my chronology, in 2011—July 29, 2011—I was still Minister of Transportation, and then, post-election 2011, I was Minister of Municipal Affairs and Housing. So the walk-around on July 29, 2011, I was Minister of Transportation, and in 2011, on the Keele Valley walk-around, I was Minister of Municipal Affairs and Housing and Minister of Aboriginal Affairs. So there were two different walk-arounds, two different cabinet portfolios.

Mr. Bob Delaney: And in either case, although you signed the arbitration document, you were not privy to the negotiations on this particular issue, correct?

Hon. Kathleen O. Wynne: Right, precisely.

Mr. Bob Delaney: Another thing David Lindsay said when he testified was that while cabinet was provided with a status update on the negotiations, they would not have been made aware of any specific details or numbers.

Hon. Kathleen O. Wynne: No, and that's a point that I've made a number of times, that we did not have chapter and verse of the discussions that were happening in those negotiations, nor would we in any other negotiation that was going on in a specific ministry, or between a specific ministry and another partner, so we did not have those details.

Mr. Bob Delaney: So then, to be very specific, the negotiations were not going on between the proponent and cabinet?

Hon. Kathleen O. Wynne: Exactly.

Mr. Bob Delaney: Okay. I remember my colleague from Toronto—Danforth saying that he saw nothing extraordinary about the cabinet minute you had signed, and he said in a scrum in April, "I don't see it as a smoking gun. We knew that cabinet was approving this process. So this doesn't surprise me."

Hon. Kathleen O. Wynne: Which I think demonstrates an understanding of how government operates and people's responsibilities as members of cabinet.

Mr. Bob Delaney: So as the Minister of Transportation, there were—

Hon. Kathleen O. Wynne: So we're going back to July?

Mr. Bob Delaney: Yes, okay. So there would not have been, as my colleague across the table has referred to, casual conversations between you and the Minister of Energy on the details of this agreement?

Hon. Kathleen O. Wynne: No, no.

Mr. Bob Delaney: Thank you.

Hon. Kathleen O. Wynne: The only casual conversations were what I think everyone in all of the parties

would have had, that there was a lot of consternation in the community about the siting of the gas plant.

Mr. Bob Delaney: Yes, that's true. I should know, I was—

Hon. Kathleen O. Wynne: I was going to say, you would know that.

Mr. Bob Delaney: Yes.

Well, since the last time you appeared, the Auditor General's report has been released, a report that you had requested even before you had been sworn in as the Premier, and it was, in fact, one of the very first issues that you took on as Premier. I think that we as a caucus and certainly you, yourself, recognized the importance of assuring that the public had all of the information that was available as well.

Hon. Kathleen O. Wynne: Actually, I raised the issue during the leadership campaign and said that it was my intention and my commitment that we would open up the process, that we would provide all the documentation and that we would get the information to the committee that was being asked about.

Mr. Bob Delaney: True. In fact, I can remember a few instances where I heard you say so.

The Information and Privacy Commissioner, since you were last here, released her report, which was during the summer, on document retention practices by the government—again, another item that, as Premier, you moved quickly to lead on. It is worth mentioning that the state of the art in technology has changed a lot in the 10 years since we've been the government, and a lot of those policies did, in fact, desperately need a re-write. You gave direction to all political staff on the need to be responsible and diligent on retaining documents pertaining to government business and ensured that new training processes were put in place.

The Information and Privacy Commissioner, in fact, said—and I'll use her words—"The Premier has been fully cooperative with me and my office. In fairness to Premier Wynne, you have my full cooperation, whatever you want from us." She further said, "Any cooperation we needed was there."

With regard to the open and transparent mandate that the government has implemented and, to my knowledge, certainly enforced, are there some comments you wish to make on that?

Hon. Kathleen O. Wynne: I just want to reinforce what you said. We made it our business to work closely with the Information and Privacy Commissioner. I wanted to make sure that her expectations were met in terms of our training of staff and the understanding of the rules that needed to be in place. As you have said, the technology has changed enormously in a very short period of time, and so the rules and protocols around the retention of information had to change.

She also said—this was in June—"I have commended Premier Kathleen Wynne's government's approach to dealing with this issue, referencing the staff training program she instituted and the memo circulated by her chief of staff." For me, what was very important was that

this be across government, that my chief of staff work with the chiefs of staff in all of the offices, that there be a uniform understanding of how to deal with information and that there be training—that it wasn't just enough to send out a memo, but that people actually have training and they understand what was acceptable to keep and what they didn't need to keep.

Mr. Bob Delaney: Which, again, considering the evolution in the power of information systems and their ability to retain information, is reasonable over the span of the 10 years that we've been in government.

Hon. Kathleen O. Wynne: Yes.

Mr. Bob Delaney: You're now witness number 73. The committee has received about a quarter of a million documents, heard about 100 hours of testimony, not only from elected members but from energy experts, former political staffers, the former Premier twice, the current energy minister twice and the current Premier, you, twice. Our government has put forward two motions of note in this committee. On March 5, we put forward a motion to significantly expand the scope of the committee to deal not only with the production of documents, but the broader issues related to the siting process of energy infrastructure in Ontario and the relocation of gas plants. Then, afterwards, the government members put forth a motion requesting documents government-wide for an expanded time frame—although, I might add, the opposition did vote against both of those. Could you review with the committee why you proposed those and why you felt those were important?

Hon. Kathleen O. Wynne: As I said, before I came into this office, I thought it was very important that, as there continued to be questions about documents and information that hadn't been accessible, we make that information accessible, that we provide the answers to the questions that were being asked, and that it not be a technicality of the scope of the committee that would preclude those documents from being made available. That was why, when I came into this office, I wanted to open up the scope of the committee. I wanted to get the committee reinstated, first of all, get it up and running, and make sure that the scope of the committee would allow for the request for the documents and the questions that needed to be asked to be answered.

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I really felt that it was important that we get to the issues that were being asked about in the Legislature and that we have the opportunity, among all parties and the public, to look at the information and look at the decision-making process. I thought that that was important, and so that's why we moved in the way that we did. You've gone over the number of documents, you've gone over the number of witnesses, you've gone over the hours that have been spent on this, and I think that there is a lot more information than there was 10 months ago; there's a lot more information available. So I think we've done absolutely the right thing in terms of getting that information out and allowing us now, in the process of getting that information out, to change the rules around

information retention and to look at a new process for siting energy infrastructure. There's a lot of work that has been done in that time period as the committee has done its work.

Mr. Bob Delaney: Just to go backwards a little bit, earlier you were discussing back and forth with Mr. Bisson about a cabinet discussion. When Minister Chiarelli was here just a short time ago, he confirmed that there was no discussion in cabinet that took place with regard to the documents for the estimates committee. Is that your recollection as well?

Hon. Kathleen O. Wynne: Yes, that's my recollection and that was my answer to Mr. Bisson.

Mr. Bob Delaney: Okay. As well, I'd like to just sort of explore whether or not you felt, at the time, there was a three-party commitment to the actions that the government subsequently took. Almost every witness that has testified at this committee has confirmed that all three parties had committed to cancelling both power plants.

When Oakville mayor Rob Burton appeared before the committee, he told the committee, and I'll use his words, that he had "won promises from all parties to stop the proposed power plant."

When my constituent Mayor Hazel McCallion from Mississauga was here, she told us, and I'll use her words, "I think all parties would have cancelled it."

We've since obtained transcripts, campaign literature, robocall scripts, all of this highlighting the commitments made by both opposition parties. When former secretary of cabinet Shelly Jamieson visited the committee for the first time, she said that she was confident that the OPA had followed the public consultation process with the existing rules in place at the time. She also said, and I use Shelly Jamieson's words, that she was "completely convinced that the people of Mississauga and Oakville didn't want those gas plants in the end."

Hon. Kathleen O. Wynne: To your first point: I completely agree with you that that was the common understanding of what was going on at the time, that all three parties were committing to moving, to relocating the gas plants, and so—

Mr. Gilles Bisson: Point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, a point of order. Time is stopped.

Mr. Gilles Bisson: I would like the Clerk to make a copy of this particular press release from the last election where Andrea Horwath says that that's not the case. Can you please distribute that to the members?

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, I would be absolutely delighted to do so, but that's not a point of order, and probably not worth the—

Interjection.

The Chair (Mr. Shafiq Qaadri): Please continue.

Hon. Kathleen O. Wynne: Well, if I can just pick up on that, I'm saying that it was the understanding, there was a general consensus—and I think the testimony of the mayors that you have just cited speaks to that understanding—that this was something that all three parties agreed needed to happen.

In terms of the community consultation, I think what's important about what you said is that the rules that were in place had been followed in terms of community consultation. That's why it's really important that we put new rules in place: that we put new rules in place for the involvement of—

The Chair (Mr. Shafiq Qaadri): One minute.

Hon. Kathleen O. Wynne: —political staff, and that we put new rules in place in terms of engagement of community. That's what the IESO and OPA report on siting—there are 18 recommendations, and it really points to greater local voice and responsibility and enabling early and sustained engagement, which I don't think we had in place at the time. That's why we're moving to implement those recommendations.

Mr. Bob Delaney: Well, thank you very much. And Chair, I think, to follow up on Mr. Bisson's points, we will once again ask the NDP candidates to come forward, and I know we can depend on the co-operation of the party to ensure that this time their invitations will be accepted.

Chair, I think I'm done with my time for this round.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

To the PC side. Ms. MacLeod.

Ms. Lisa MacLeod: Thanks very much, Chair. Welcome back to the committee, Premier. We appreciate your taking the time to join with us.

I wanted to start off with some of the facts that we all know and I think are generally accepted, and then I just have a quick question. We know that the cabinet knew the cost was well above \$40 million as early as 2011, and that comes from Serge Imbrogno, who attended this committee recently and said that cabinet would have known it was at least \$700 million by December 2011.

People who testified from the government for the cabinet said that your cabinet would have known the true cost of the cancellation. Again, that was Mr. Imbrogno, who I mentioned, who said that by December 2011, cabinet would have known that costs would have exceeded \$700 million. Colin Andersen has appeared before this committee twice and has said that that cost would have been known. Shelly Jamieson, who has twice appeared before this committee—she was a cabinet secretary, who told us the first time that it was buckets of costs but acknowledged it would have been well over \$40 million; as well as David Livingston, the previous Premier's chief of staff.

So I have to ask, on behalf of taxpayers, who's telling the truth: them or you?

Hon. Kathleen O. Wynne: Well, I've told you what I know. I've told you what my involvement in the process was. What I have said a number of times in the House and I said at the committee the last time I was here, every time I stood up in any venue to talk about a number associated with any of the gas plant relocations, I was using numbers that had been given to me by our officials, by our staff.

The reality is that the reason I asked for the Auditor General to look at both gas plant relocations was that

there was such uncertainty about numbers. There was no firm reporting of what the costs would be. I wanted us to have the analysis of the Auditor General on both of the gas plant relocations.

Ms. Lisa MacLeod: The problem with that, I think, is that you've got four credible people coming here—one who was a Liberal staff member, three who work as bureaucrats for us, who have no reason to mislead any committee or the Legislature—who effectively told us that cabinet did know what the costs were. The problem that exists now is not only did you acknowledge in September 2012 that the cost was \$40 million—you would have known for over a year by that point that it had been closer to \$700 million. We know now that it's \$1.1 billion.

Hon. Kathleen O. Wynne: Well—

Ms. Lisa MacLeod: No, no. Hold on just two seconds, because you appeared before this committee before, and I asked you, oh, approximately 40 times, "When would you have known it exceeded \$40 million?" and you stuck to that line. Then you appeared in the House, told us it was \$40 million, and then the auditor comes out and says, "No, no, wait. This was \$1.1 billion." And now this is our first time and opportunity to have you before the committee, and your testimony from then as well as the facts that we know have some very glaring contradictions. I really think that speaks to your motivation, but also I think it speaks to the fact that you maybe haven't been effectively as open with this committee and the assembly as one would have hoped.

Hon. Kathleen O. Wynne: Well, again, I will repeat: I have been completely open with this committee. I have told this committee what I know. The cost to which you're referring was the sunk cost, which was the cost that was known. That was a concrete number that we knew. The original memorandum of understanding, which was posted on the website from the beginning, said that there would be, could be costs beyond the \$40 million, but the \$40 million—that was the number that we were given by our officials. That was the number that was known. But—

Ms. Lisa MacLeod: But those same officials have told us—

Hon. Kathleen O. Wynne: If you could just—sorry.

Ms. Lisa MacLeod: Sorry; I don't have a lot of time. I just wanted to say that those same officials have told us repeatedly that you knew it would have been in excess of \$40 million if you included the rate base.

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What I think has happened—and this is what I've asked both Bob Chiarelli and Dwight Duncan. Why did they stick with the \$40-million taxpayer tab when they knew we wanted to get to the entire true cost? I think that's what you guys were using in order to inform the public of one thing when you knew there was another truth to that.

Hon. Kathleen O. Wynne: You are attributing to me what you think I knew, and it's just not accurate. I've told you what I knew. I've told you that the \$40 million

was a number that was known. I've also said that there was broad knowledge that there were other costs that would accrue over time, but there wasn't any consistency in what those numbers would be. So when you say—

Ms. Lisa MacLeod: But Serge Imbrogno, the deputy minister—

Hon. Kathleen O. Wynne: Can I just—

The Chair (Mr. Shafiq Qaadri): Colleagues, one at a time.

Ms. Lisa MacLeod: When the deputy minister appeared before committee and said she would have known by December 2011 that the costs were in excess of \$700 million, why would you lowball it to \$33 million to \$40 million? It's incomprehensible to the average person out there who is wondering how you could sign a document to make TCE whole, give all of the negotiating rights over to a private company at the expense of the taxpayer and not know at all that this was going to cost what it did when we had credible witnesses. And it's not me or Mr. Bisson who is saying this; it is Serge Imbrogno, Colin Andersen, Shelly Jamieson, David Livingston, JoAnne Butler—you name it, that whole list of people. I guess if there's one thing I want out of today on behalf of the ratepayers and taxpayers, it's the truth.

Hon. Kathleen O. Wynne: And I have told the truth. I have told the truth in the Legislature and I have told the truth here. Twice I have told you exactly what I knew. Every time I have stood and spoken about this issue, I have said exactly what I knew, and the reality is that there was a lot of uncertainty about the numbers. That's why I asked the Auditor General to look at both situations.

I can go through the chronology again if you would like, but I have told you numerous times now what I knew and why I took the action that I did, which was to open up this process so that you could get all the documents, which you have, in fact, got.

Ms. Lisa MacLeod: But we still don't know if you or Colin Andersen are telling the truth, because both of you can't be. That's the biggest problem.

Now, I just want to go back to your defense, because—

Hon. Kathleen O. Wynne: I don't think that's actually true. The reality is—

Ms. Lisa MacLeod: It is true. Colin Andersen said that everybody knew.

Hon. Kathleen O. Wynne: I don't have Colin Andersen's testimony in front of me, but I do know that there wasn't a lot of certainty about what the numbers were. I think that it's misconstruing the reality to say that one or the other is the truth. I think both were true. There was uncertainty. I had been given documentation on certain numbers. Those are the numbers I used. There was uncertainty. We needed to go into it further, which is why the Auditor General needed to do her analysis.

Ms. Lisa MacLeod: Where I do think there is certainty, though, Premier—and this came from Colin Andersen, Serge Imbrogno and others—is that everyone knew that it wasn't as low as \$40 million, but you con-

tinued to tell this assembly and this committee that it was.

I want to go to Shelly Jamieson's testimony, the most recent testimony, because I had asked her a question about force majeure and I had asked her a question about the pathways or the options that they would have brought to cabinet.

It was interesting; she said that there were three. She said that within those options was the most expensive path, and it was the path your government took, that led to making TCE whole and entering into an arbitration agreement, which eventually cost it a settlement of \$1.1 billion. You've said here at the committee—and I've written this down—that effectively you were defending the people and that avoiding litigation trumped everything else, if I've written that down correctly. But you signed off on a cabinet minute that you neither read nor understood, and within that you effectively gave TCE most of those negotiation rights. The problem with this is that we now know from the auditor's report and from Shelly Jamieson's testimony that the force majeure mechanism could have kicked in.

I'm going to read to you what the auditor said, and I'm sure you've read it before:

"That is, in determining the amount of damages, the arbitrator was explicitly disallowed from considering the possibility that TCE would not have been able to overcome Oakville's opposition to the plant (the force majeure provisions) and that the OPA's cancellation of the plant was not a discriminatory action and therefore should exempt it from including lost profits in the determination of damages. This arbitration framework clearly favoured TCE and gave it the upper hand in the negotiations for a project to replace the Oakville plant."

That is the cabinet minute that you signed. Shelly Jamieson would have acknowledged in a cabinet meeting that there was a force majeure provision there that would have avoided us dealing with the location, because even the mayor of Oakville testified to this committee that the city was prepared to take the case down a time-consuming path to the Supreme Court of Canada.

At what point, as a member of the cabinet and as a campaign chair to the Liberal Party, did you look at that and say, "Okay, you know what? Avoiding litigation trumps everything else, despite the fact that we have a built-in clause that gets us out of this for next to nothing."

Hon. Kathleen O. Wynne: Well, again, I've answered this question. I've said that my understanding, the information that I was given, was that to go down the path of litigation—I think you've seen the comments of Chris Breen, from TransCanada. He said, "We had ... the Ontario Superior Court and Divisional Court, and we would have taken this to whatever court was required" to get this through.

We understood that litigation was a very real possibility and that that was potentially the most damaging and most expensive option, so that is why we entered into a negotiation.

I've answered that question many times, and that is the reason that we went down this path. It's the reason that, as part of the cabinet, I signed that document.

Ms. Lisa MacLeod: Well, the question, I think, still remains. You signed a cabinet minute that eventually cost us \$1.1 billion. You knew as early as December 2011 that it would be far in excess of \$40 million, likely over \$700 million, according—

Hon. Kathleen O. Wynne: Okay, that is your—

Ms. Lisa MacLeod: No, it's not. No, it's not.

Hon. Kathleen O. Wynne: Sorry, Mr. Chair. That is your contention—

Ms. Lisa MacLeod: If you sat on this committee as long as I have, and you listened to the depositions, like I did, from Serge Imbrogno and others, then you'll build a timeline.

I go back to the point: Either he is telling the truth, or you are telling the truth, but one can't say it's in excess of \$700 million, the other can't say it's \$40 million, and you both be right.

Hon. Kathleen O. Wynne: I'm telling you that—

Ms. Lisa MacLeod: If that's the math that's running this province of Ontario, that's probably why the \$1.1-billion cancellation didn't make it into the LTEP.

Hon. Kathleen O. Wynne: Are you done? Can I answer?

There was uncertainty about the numbers. There was continued uncertainty about the numbers. I've answered that question a number of times.

In terms of the long-term energy plan, I know that you're very aware of the costs having been incorporated. The Minister of Energy spoke to that in the House today.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, just before you begin—Mr. Holyday, we are honoured to have you at the Liberals' side, but I would invite you to sit with your own party. Should there be any change, you need to actually get a slip from the Clerk for sitting on the Liberals' side.

Please continue, Ms. MacLeod.

Interjections.

Mr. Rob Leone: No, he can sit wherever he wants.

The Chair (Mr. Shafiq Qaadri): No, he can't.

Ms. Lisa MacLeod: Is my clock stopped?

The Chair (Mr. Shafiq Qaadri): Yes.

Interjections.

Ms. Lisa MacLeod: Sit right here, Doug, right beside me. You'll be in the shot. Thanks very much, Chair.

It still doesn't tell me, regardless of this, when you would have known that the costs would have exceeded \$40 million.

I guess she's just walking away.

Hon. Kathleen O. Wynne: I'm just getting some water. Sorry.

Again, I've answered that question a number of times. I've said that there was uncertainty about the number. There was uncertainty about the number up to the point where I asked the Auditor General to do an analysis of the costs. That's why that was done.

Ms. Lisa MacLeod: Okay, let's switch some gears. I guess I'm not going to get an answer from you on when you knew it was well in excess of \$40 million, so we'll let Serge Imbrogno's comment stand, that cabinet would have known in December 2011.

What I will ask now is—what's significant is we've had two major issues since you appeared before committee. The first one was the AG's report, which we've touched on and we'll go back to.

The second is, the OPP paid a little visit to your office a couple of weeks ago. I'm wondering, when the OPP arrived, did you or any of your staff hand over the 1,200 emails that were backed up on tapes—with your name on it?

Hon. Kathleen O. Wynne: I don't know anything about the OPP investigation. The OPP will proceed as it chooses in asking questions and investigating the former Premier's office. As you know, that is what the OPP has been asked to do, I believe, by your party, and I have no details about the OPP investigation.

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Ms. Lisa MacLeod: So when the OPP made arrangements to visit your office, you had no knowledge of that?

Hon. Kathleen O. Wynne: I had no knowledge of that.

Ms. Lisa MacLeod: Did you read it about it in the Ottawa Citizen?

Hon. Kathleen O. Wynne: I have no knowledge of the OPP investigation.

Ms. Lisa MacLeod: So when they visited—

Hon. Kathleen O. Wynne: I mean, I know that there is an investigation going on, but I don't know the details of it.

Ms. Lisa MacLeod: But they visited your office.

Hon. Kathleen O. Wynne: I don't know when they've been in my office.

Ms. Lisa MacLeod: If the OPP visited my office, I'd sort of know about it. So you didn't know that they showed up at your office on the second floor here?

Hon. Kathleen O. Wynne: I don't know when the OPP visited my office. I don't know anything about the investigation.

Ms. Lisa MacLeod: Did your staff indicate anything to you about the emails that included your name on them?

Hon. Kathleen O. Wynne: I don't know anything about the details of the OPP investigation; I really don't.

Ms. Lisa MacLeod: Okay. Well, that's interesting.

Hon. Kathleen O. Wynne: Because remember, it is an investigation of the previous Premier's office.

Ms. Lisa MacLeod: Right, but I guess there were 1,200 emails that were backed up with your name on them, so there were tapes. I'm just wondering—I'm saying to every member of this committee, if the OPP were to pay a little visit to your office, I'm sure your staff would tell you, and if your name appeared on 1,200 emails with respect to the cancellation of the—

Hon. Kathleen O. Wynne: My staff knows that we will co-operate fully with the OPP. I just don't know the

details of the OPP investigation. I've made it clear to them that we will accommodate their investigation into the previous Premier's office—I have made that very clear—but I don't know the details of their investigation.

Ms. Lisa MacLeod: If you're going to accommodate them but you don't know what they did in your office, how could you have accommodated that? Would your staff have accommodated that?

Hon. Kathleen O. Wynne: My staff would be working, yes. I don't know what the details of the investigation are. I don't know exactly the timing or exactly what they are looking at.

Ms. Lisa MacLeod: All right. Premier, I'm going to go back to the costs. During your last testimony, both Mr. Fedeli and I asked you a very simple question, one that you seem to have difficulty answering here today and at the time. Hopefully, by the end of today, we'll get that information.

You used the number that the AG has confirmed. You've said that you support her findings. You would have known, I guess—

Hon. Kathleen O. Wynne: I said I accepted her report.

Ms. Lisa MacLeod: You accept her report. But so many other people have claimed that you knew that it was a completely different number. I'm just wondering, at what point were you aware from the auditor—would you have received that report a week or two weeks in advance, and would you have known the true costs would have been \$1.1 billion?

Hon. Kathleen O. Wynne: I'm just trying to remember. I didn't get it a week or two weeks in advance; I think I got it maybe a day or so in advance.

The point is that the numbers were uncertain and continue to be uncertain. There's a different set of numbers and a different set of assumptions that the Auditor General used, so there are different numbers. In fact, if I recall correctly, the Auditor General has said that these are estimations of future costs, and there could be changes to those numbers again. I think it highlights how fraught with uncertainty projecting out 10, 15, 20 years can be. So I think it's important that we understand the complexity of doing that.

Ms. Lisa MacLeod: Do you think the costs could go higher?

Hon. Kathleen O. Wynne: I can't answer that. I don't know. I think the Auditor General has made it clear that there was uncertainty, and she has used a certain set of assumptions and she has made certain projections. I have accepted her report.

Ms. Lisa MacLeod: Do you acknowledge, then, that the cost likely won't go down, but if there are other costs or if there are any changes to the cost, it will go up?

Hon. Kathleen O. Wynne: I can't make that prediction.

Ms. Lisa MacLeod: Premier, I want to know one final thing: How did you prepare for committee today?

Hon. Kathleen O. Wynne: I was briefed by my staff.

Ms. Lisa MacLeod: Did you do something similar to debate preparation?

Hon. Kathleen O. Wynne: I do mock scrums all the time, so yes.

Ms. Lisa MacLeod: Who would have written your remarks today?

Hon. Kathleen O. Wynne: The way I write remarks is that my staff do drafts and I have input. We do a combined effort.

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Lisa MacLeod: When you appeared before Steve Paikin, did you do preparatory work before that?

Hon. Kathleen O. Wynne: When I appeared on The Agenda?

Ms. Lisa MacLeod: Steve Paikin, yes. The Agenda.

Mr. Bob Delaney: Chair, on a point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order, which actually, our folks are just debating—

Mr. Bob Delaney: Yes. I'm not entirely sure that the Premier's interviews outside the scope of this committee are within the terms of reference of this committee.

The Chair (Mr. Shafiq Qaadri): I accept that, Mr. Delaney. There seems to be an interest in the amount of practice that goes on on the government side. I think Ms. Thompson is on record with that.

We're not entirely sure of the relevance of this to the mandate. In any case, you have 45 seconds left.

Ms. Lisa MacLeod: Okay. Here's the relevancy. You appear before Steve Paikin, with crocodile tears, to say you've apologized, yet no one has really taken any responsibility. No one has been fired, no one has resigned. I just wanted to know if you had prepared for that audience that you would have with Steve Paikin and the rest of the province.

Hon. Kathleen O. Wynne: Well, it is my practice in my job to be prepared whenever I go into a meeting, whenever I go into a committee, whenever I go into the House, so I do prepare as I do my work, no matter what aspect of my work I'm doing.

Ms. Lisa MacLeod: Thanks, Premier.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. To the NDP side. Monsieur Bisson.

Mr. Gilles Bisson: Welcome back to another round of questioning, Premier. I just want to wrap up the first part of the questioning and move on to something else. Essentially, the auditor refutes what you said when you were testifying to this committee prior to the auditor's report. You come here and you say under testimony, "Well, in fact, you know, what I did in signing that cabinet document didn't lead to higher costs." You're saying at committee today in fact that we saved money because we didn't have to litigate; that was essentially your assertion.

The auditor says in fact that's not the case. What led to the higher cost of settlement was the fact that you took away the protections that the OPA had in the contract by signing that arbitration agreement. Do you still maintain that your decision to sign that document in fact led to higher costs of settlement?

Hon. Kathleen O. Wynne: I don't think anyone knows what the costs could have been if there had been litigation, so it's impossible for me to answer that question.

Mr. Gilles Bisson: Could I ask you this question?

Hon. Kathleen O. Wynne: I signed that document as part of a cabinet that believed in good faith that we were doing our best to avoid litigation, which was in the best interests of the people of Ontario.

Mr. Gilles Bisson: Okay. But could I ask you this question? Your assertion is that you were trying to protect yourself from being sued, in other words, being litigated, and that would in fact cost more money should you go that way and the arbitrator says no. Is it possible that litigation could have led to a lower settlement cost than the \$650 million on Oakville?

Hon. Kathleen O. Wynne: Neither you nor I can know that, and I have answered this question a number of times.

Mr. Gilles Bisson: No, but is it possible? The question is, is it possible, if you had litigated, that the cost of settlement would have been lower?

Hon. Kathleen O. Wynne: I can't answer that question.

Mr. Gilles Bisson: Is it possible?

Hon. Kathleen O. Wynne: I cannot answer that question. We have gone over this ground many times.

Mr. Bob Delaney: Chair, on a point of order—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney on a point of order.

Mr. Bob Delaney: Chair, I don't wish to intercede in my colleague's questioning, but he keeps asking the same question, and what the witness is saying is that it has been asked and answered.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. He is quite welcome to spend the time as he wishes.

But, Mr. Bisson, to your point, you cannot force a witness to answer a hypothetical. You may pose it, but they can answer as they see fit. Please, your time continues.

Mr. Gilles Bisson: Well, I'm posing, and I'm wondering if she's going to answer as she sees fit.

The question is, if your assertion is that you signed the arbitration agreement because the cost of litigation would be higher, is it possible that signing that arbitration agreement—by allowing the litigation to go forward, pardon me—could have led to a lower settlement? Yes or no?

Hon. Kathleen O. Wynne: You may not like this answer, but we cannot answer that question. We don't know. I cannot predict what might have happened.

Mr. Gilles Bisson: All right. Well, clearly the auditor is of the view that by your signing that arbitration agreement it did lead to the higher-price settlement, so that's that.

Earlier in my questioning, I was asking you questions at which point—and my colleague also asked the same question in regard to your role around the deletion of emails and the deletion of documents and all of those hard drives and all of those—what do they call them again? Exchange—what were the drives?

The Chair (Mr. Shafiq Qaadri): USB keys?

Mr. Peter Tabuns: Exchange servers?

Mr. Gilles Bisson: The exchange servers were deleted and the mirrored servers were deleted, and you're saying

that had nothing to do with you. Is that still the case, that you had no idea that there was an attempt on the part of people in the Premier's office, in the government, to delete documents that could have been damaging to the government in this investigation?

Hon. Kathleen O. Wynne: That's absolutely true. That's absolutely true that I had no knowledge of that and have changed the protocols, and that was the gambit that we were just on about the Information and Privacy Commissioner. She has noted the work that we have done to change the process and the protocols.

Mr. Gilles Bisson: She gave you a great report, that's for sure.

Anyway, the point is that you're saying you're the new sheriff in town. You've cleaned up Dodge and things are doing better.

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I have here an RFP dated Tuesday, October 22, 2013—at that time, as far I remember, you were the Premier. It's a request for proposal that reads as follows: "Scope of work: The ministry requires a ... computing device disk data erasure solution intended to completely clean 'wipe' server disks and disk storage arrays, including mirrored drives and related computer devices." If you're trying to clean up Dodge, why are you buying software that is going to allow you to more easily delete emails and documents in future?

Hon. Kathleen O. Wynne: I have no idea where that document comes from. I have no idea of the context—

Mr. Gilles Bisson: Let me send you a copy.

Hon. Kathleen O. Wynne: I have no idea the context in which that document was written or to what it pertains. I would have to get information for you on that. I have no idea what that document is referring to.

Mr. Gilles Bisson: But the point is, you come before this committee, you say, "I signed the arbitration agreement because I was convinced that it was going to lower the settlement cost," and the auditor comes here and says completely the opposite—that in fact, it didn't lead to a lessening of the settlement costs; it led to an increase of the settlement costs. You then say, "I'm the new sheriff in Dodge and as sheriff I'm going to clean up this place. There's going to be a new sheriff who's going to make sure that all of this is not happening again." Why are you buying software that's not going to allow you to make sure that you can completely wipe server disks, storage arrays, including mirrored drives and related computer devices? Why?

Hon. Kathleen O. Wynne: Mr. Bisson, I'm not an IT expert, but I—

Mr. Gilles Bisson: Are you the Premier?

Hon. Kathleen O. Wynne: I am the Premier. I am the Premier—

Mr. Gilles Bisson: So then the question is—

Hon. Kathleen O. Wynne: —but I don't know whether this has to do with a specific ministry, a specific set of documents. I have no idea what this piece of technology is being purchased for. So I cannot comment—

Mr. Gilles Bisson: Fair enough.

Hon. Kathleen O. Wynne: I cannot comment on the relevance of this piece of paper—

Mr. Gilles Bisson: Fair enough.

Mr. Bob Delaney: Point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order.

Mr. Bob Delaney: Chair, thank you. This is a document that's dated the 20th of November, 2013, which is a request for proposal. It's tabled from the corporate services branch, infrastructure technology service. Not only is this document out of the scope of the committee's inquiry, but it has nothing to do with what we're here to talk about.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

Hon. Kathleen O. Wynne: Can I just—

The Chair (Mr. Shafiq Qaadri): In a moment, Premier. There are several issues. First of all, the point of order is not well-taken. Time has stopped for my PC colleagues. The issue is that recommendations that emanate from this committee with reference to whether it's email servers or siting of gas plants are material. Nevertheless, I think it is—I'll then return the floor to you, Mr. Bisson—

Mr. Gilles Bisson: I asked the question and you're saying you don't know what this is all about. I'll accept your answer, but if you—

Hon. Kathleen O. Wynne: But can I just finish that?

Mr. Gilles Bisson: Yes, go ahead.

Hon. Kathleen O. Wynne: To assume that somehow the potential purchase of this piece of technology, this piece of software, if that's what it is, has anything to do with the issues that we're talking about or other pieces of information that should be retained, that must be retained as part of our new protocol—that is a leap that I just don't think is logical.

Mr. Gilles Bisson: Well, you could argue that or you could argue the opposite. The fact is, this government deleted a whole bunch of information that would have been central to what this committee had to do. They knowingly did that, knowing what the result was, and then we see this RFP. You might be right. There might be something else going on, but you've got to admit that it does look kind of weird, doesn't it?

Hon. Kathleen O. Wynne: Again, I have no idea of the context of this RFP.

Mr. Gilles Bisson: I'm going to give you again this one document. I'll save the time; I'll give it to you directly. This is a CBC interview during the period of the election. Can you read into the record—

Mr. Bob Delaney: Chair?

Mr. Shafiq Qaadri: Mr. Delaney, point of order.

Mr. Bob Delaney: Mr. Bisson is welcome to read into the record anything he wants to, but he cannot ask the witness to read anything into the record that is not her own testimony.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. I believe the point is well-taken. I would also just remind colleagues that any documents that are to be

shared with the witness are (a) to be distributed by the Clerk and (b) to be distributed to all members of the committee simultaneously.

Mr. Gilles Bisson: So my question is, do you want to read it?

Hon. Kathleen O. Wynne: No, I have read it, and I go back to my position that there was a broad consensus among the community members and all parties that cancelling the gas plants was what needed to happen.

Mr. Gilles Bisson: That's your assertion. Let me just read—this is from an interview during the election: The Canadian Press, 2011 election. It says:

“Last-minute promises like that, people have to decide whether they're credible or they're not,” she said in Niagara Falls.” That's Andrea Horwath. “Now Mr. Hudak's making the same claim, we don't know what that's going to cost. I think what both these guys need to do is be really upfront ... about what the cost of cancelling these deals is going to be.”

Clearly, we were of the position that you don't cancel contracts and rip them up in the middle of an election without knowing what the cost is. So, just for the record, I wanted to put that in, because you had made an assertion earlier.

I just want to come back—

Hon. Kathleen O. Wynne: And I stand by my assertion that it was a consensus that the gas plant should be cancelled.

Mr. Gilles Bisson: Fair enough. The record proves otherwise.

I want to go back to the question of cabinet's knowledge and the knowledge of the caucus when it came to the withholding of the documents. We've had a number of cabinet ministers now tell us that there was discussion at cabinet, and those discussions were related to the strategies or the discussions around why it is that they're not releasing the documents to the estimates committee.

I'm going to ask you again, under oath, were you aware of any discussion at cabinet or in caucus that related to the non-release of documents requested by the estimates committee on May 16, 2012?

Hon. Kathleen O. Wynne: As I've said, I do not recall any discussion specifically about the release of documents to estimates. And as I've said before, you have all of the documentation, you have all of the cabinet minutes, that show what discussions took place.

Mr. Gilles Bisson: So I'm to believe, from what you're telling me, that either you don't remember those discussions or they never took place.

Hon. Kathleen O. Wynne: I've said I don't recall specific discussions about documentation and the estimates committee.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Gilles Bisson: Cabinet, I have to believe—because I've been on cabinet committees—discusses issues that are relevant to the government of the day. I find it very hard to believe, on an issue as big as not releasing documents requested by the committee, that there was no discussion at cabinet.

So I ask you again, were you aware of any discussions at cabinet in regard to the non-release of documents?

Hon. Kathleen O. Wynne: I've answered this question at least four times. I think you have my answer.

Mr. Gilles Bisson: Okay, that's fine. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. To the government side. Mr. Delaney, 10 minutes.

Mr. Bob Delaney: Thank you very much, Chair. I must commend some of the staff for being able to very quickly find an explanation for the document that Mr. Bisson dropped in. He dropped a copy of a request for proposal to enable the Ministry of Government Services information technology branch to procure an automated software tool to securely overwrite internal server and desktop storage devices, which means hard drives. It is a standard security practice regarding old servers and desktops before they're disposed of, and does not have anything to do with records that must be retained by law.

Mr. John Yakabuski: And you're an expert on this?

Mr. Bob Delaney: As a matter of fact, yes, I will claim a little bit of expertise on this topic. Thank you very much.

There was a question raised earlier regarding a remark made when Deputy Minister Serge Imbrogno was before the committee, referring to an estimate of \$700 million. The \$700 million that they referred to was what the deputy minister speculated the costs could have been if—if the matter had gone to arbitration. Those costs were never confirmed, and that was before the Auditor General's reports were released.

If members wish, particularly the PC members, we are pleased to recirculate a document already given to the committee some time ago which confirms that the OPA costs were estimated to be between \$33 million and \$138 million at that time, with many numbers that were going around, and I believe the final figure was \$40 million. I'll give this document to the Clerk, although members already have it.

Hon. Kathleen O. Wynne: That confirms my statement that the numbers were unclear and there was movement.

Mr. Bob Delaney: Indeed. Mr. Bisson's comments, I think, are a little mysterious for me.

Here's a quote from Andrea Horwath in Hansard, October 18, 2010: "New Democrats actually have thought for a long time that that plant"—referring to Oakville—"should never have been built and we've said so."

In the same year, 2010, the member for Toronto-Danforth said, on December 2, in Hansard: "I'm glad the people of Oakville hired Erin Brockovich and did all the things that they did in order to have this killed."

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The leader of the NDP said on March 3, 2010, "Gas plants should only be a last resort and should be built away from densely populated areas." And we have many other examples of quotes from the NDP, before and during the writ period, that said very clearly that they took the position that the Oakville plant was, in fact, not needed and should not be built.

I think Mr. Del Duca has a few questions.

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca?

Mr. Steven Del Duca: Premier, I wanted to move towards a brief discussion with our remaining time regarding how our government has been proactive with respect to the siting process. As many here would know, part of our committee's mandate is to consider the cancellation and relocation of the Mississauga and Oakville gas plants, but also to make recommendations regarding the tendering, planning and commissioning process.

On May 6, 2013, the Minister of Energy directed the OPA and the IESO to develop joint recommendations for a new integrated regional energy planning process that would focus on improving how energy infrastructure projects are sited in Ontario. From what I understand, feedback was received from over 1,200 Ontarians, including First Nations, Métis, municipalities and communities, and the IESO and the OPA reported back to the Minister of Energy on August 1 with 18 recommendations that our government committed to accepting and implementing.

I'm wondering if you could tell the committee today, do you agree that the OPA and IESO recommendations provide for the community-specific feedback that takes the concerns of individual communities into account?

Hon. Kathleen O. Wynne: Yes, I do, and I think you can see the impact of the recommendations from the IESO and OPA report on our long-term energy plan. The core recommendations—I'll just go over them quickly.

The first one is to strengthen processes for early and sustained engagement with local governments and the public. The second one is to provide local governments and communities with a greater voice and responsibility in planning and siting. The third is to support inter-ministerial coordination, and I think that's an important aspect of good engagement with the community, because we need to have that across-government approach.

The other recommendations—I will only speak to the first one, but I think it's a significant one, and that is the fostering of ongoing relationships with First Nations and Métis, and recognizing the duty to consult. It's the engagement of all of the communities of interest—it's the local community and it's the aboriginal people who might have an interest—and to do that in a way that is real, that is sustained. I think that had we done that in both these cases, we would not be having this discussion today.

Mr. Steven Del Duca: Terrific. Thank you. Just a couple of questions left from my perspective. We have talked previously—Mr. Delaney did mention the expanded scope of this committee. We've heard now over a hundred hours of testimony from over 70 witnesses, and have received nearly a quarter of a million documents to date. I'm wondering if there's anything else you'd like to add, providing any more information at all, or anything else you'd like to say to the members of the committee today.

Hon. Kathleen O. Wynne: No. I think it would be valuable at some point to hear the committee's report, to

hear the analysis of the information that the committee has gone through, and what the committee sees as the way forward. I think that the work that was done and is written up in the IESO and OPA report is very important work, but it would be interesting to know if there were more recommendations that might come forward from the committee, because there has been a very unprecedentedly open process in terms of the availability of documentation in the last 10 months, so I look forward to the committee's deliberations.

Mr. Steven Del Duca: That's it for me, Mr. Chair. Thank you very much, Premier, for being here again today.

Hon. Kathleen O. Wynne: Thanks a lot.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. To the PC side. Ms. MacLeod?

Ms. Lisa MacLeod: Thanks very much, Chair. Thanks again very much, Premier. You had said something in my previous questioning of you, and I need some clarification. I asked if you accept the AG's finding, and you corrected me to say, "I accepted the AG's report." I'm wondering, does that—

Hon. Kathleen O. Wynne: I accept her findings. I accept her report.

Ms. Lisa MacLeod: You accept them both?

Hon. Kathleen O. Wynne: Yes.

Ms. Lisa MacLeod: Okay. That's important for me, because I didn't know if you were questioning that.

Hon. Kathleen O. Wynne: No.

Ms. Lisa MacLeod: All right. I want to get to—

Interjection.

Ms. Lisa MacLeod: My colleague mentions that there are MPPs in your caucus who have appeared before here who have questioned it, so that's why we asked, but I appreciate that.

Okay. I just would like to go back to the testimony that we previously had with respect to the force majeure measures, as well as the cabinet minutes that you signed. You signed off on a decision that has put us on the hook for \$1.1 billion. You stated that you signed off on the document with no knowledge of the costs associated, as a result of your decision.

I guess the question that I have is, how could you have signed off on such an expensive decision without knowing what the true cost would be? We've talked about what you knew and when you knew it; if we're to believe the claim that you didn't know, why did you sign it, and why didn't you ask questions?

Hon. Kathleen O. Wynne: Well, no one knew what the costs would be. Whether we had gone into a negotiation or whether we had gone down the path and there had been litigation, I don't think anyone at the time could have said precisely what the costs were going to be. So, as I've said a number of times, our belief was that entering into a negotiation in order to avoid litigation was the responsible thing to do. The way to have avoided this would have been to have had a different process in place in the first place, but given where we were, the advice we were getting was that avoiding litigation was the responsible thing to do.

Ms. Lisa MacLeod: The only problem with that, and I mentioned it in the last exchange that you and I had, is that so many impartial players came to the table. Bureaucrats, people who aren't members of the Liberal government or members of the Liberal Party came before us.

Serge Imbrogno was pretty clear; I was here. He said that you would have known in December 2011 that it would have exceeded \$700 million, so the next question then becomes this: If you and a few of your other cabinet colleagues at the time could sign off on a document to avoid litigation that would end up costing us \$1.1 billion, how many more cabinet minutes have you signed that could potentially put risk to the taxpayer and the ratepayer?

Hon. Kathleen O. Wynne: Well, again, I'm not going to be able to answer that hypothetical question. At every juncture, we have done and I have done what I believed was in the best interests of the people of Ontario. Litigation was not the path that we believed we should go down.

Do I wish that we had made different decisions earlier about siting these gas plants? Absolutely. Do I wish that there'd been a different process in place? Absolutely. That's why we're putting a new process in place. As I say, I wish that we had had a different process in place in siting both of these gas plants.

Ms. Lisa MacLeod: Do you regret signing that cabinet minute?

Hon. Kathleen O. Wynne: I wish that we had had a different process in place. I regret that we didn't have a better way of engaging the community, a better protocol around making these decisions, in the first place. At each juncture, I did what I believed was the responsible thing to do.

Ms. Lisa MacLeod: But I don't think a responsible politician would have signed off on a blank cheque, which is effectively what you did to make TCE whole.

When Shelly Jamieson appeared before this committee, she laid out a number of options to cabinet to say, "These were your options." This has been, of course, reinforced by the auditor's report that said there were force majeure provisions. The mayor of Oakville said that there would have been a lengthy battle at the Supreme Court, meaning the force majeure provisions would have prevented us from paying those exorbitant fees as ratepayers and taxpayers—

Hon. Kathleen O. Wynne: I don't think that that's a natural conclusion to what you're saying, but anyway—

Ms. Lisa MacLeod: Well, I do, and I think the problem here now is not just the money anymore, and it's not just what some would consider a cover-up. The question now becomes whether or not we can trust you. The problem is, when you come before this committee and say, despite all of us knowing that the OPP was in your office—you deny any knowledge of that. You came to this committee several times—

Hon. Kathleen O. Wynne: Sorry, I did not deny knowledge of an investigation into the former Premier's office. I understand there's an investigation. I don't know the details of that investigation, because I don't direct the

police. The police will do what they do. You have asked them—the Conservatives have asked them to investigate the former Premier's office. That is happening, but I do not know the details of their investigation.

Ms. Lisa MacLeod: Okay, but the problem is that they did appear at your office. You tell this committee that you don't know the details, but they were in your office. You told this committee it was only a \$40-million price tag, then we find out it's a \$1.1-billion price tag. You go on TV to profess to Steve Paikin that you're sorry and you regret everything, but then we learn that you had to practise before you did that.

We're now talking about signing off on a document that you don't understand, or didn't understand what the repercussions were. This now becomes a matter of trust, beyond cover-up, beyond the amount of money that it has cost the people of the province. That becomes a very significant issue for the entire public.

Hon. Kathleen O. Wynne: I have no idea how other politicians do their job. I know that when I'm going to do an important interview or appear before a committee or go into the Legislature to answer important questions posed by the opposition, I take some time to read documents, talk with my staff and understand the issues. That's how I practise.

Ms. Lisa MacLeod: Okay.

Hon. Kathleen O. Wynne: When I am aware that the opposition has asked the OPP to do an investigation, I am aware of that, but I don't know the details of the investigation. When I am confronted as a politician, as a member of cabinet, with a decision that I believe is in the best interests of the people of the province, to avoid litigation, then I sign a document that takes us down that path.

Ms. Lisa MacLeod: But you signed the document without—

Hon. Kathleen O. Wynne: I have at every juncture acted in good faith, in what I have believed to be in the best interests of the people of this province. I will continue to behave in that way, and I will continue to read documents and prepare for important meetings before I go into them.

Ms. Lisa MacLeod: Okay, but the problem is that, in this case, you didn't prepare. In this case, you didn't get briefed. In this case, you didn't find out what the true costs were, or you are not telling us the truth. You can't have it both ways. You can't say, "I'm going to prepare for Steve Paikin," and you're going to understand that you don't want litigation, and then not know that there is a risk for the taxpayer when you sign over those documents and hand over the negotiating rights.

Hon. Kathleen O. Wynne: I didn't say that.

Ms. Lisa MacLeod: That is exactly what you said.

Hon. Kathleen O. Wynne: I didn't say that I didn't know there was a risk.

Ms. Lisa MacLeod: That is exactly what you did.

Hon. Kathleen O. Wynne: No. Excuse me. I didn't say that I didn't know there was a risk. There was a risk. There were risks associated with relocating these gas plants. There was a risk of litigation, and there was a risk of higher costs. Of course we knew that, but the decision that we made was that the risk of litigation was the greater risk, so we went down a different path. When I say that I acted in good faith as part of cabinet, that is exactly the truth, and I will continue to act in good faith.

Ms. Lisa MacLeod: Your answers aren't consistent, and your answers—

Hon. Kathleen O. Wynne: Well, you may not like my answers, but they are.

Ms. Lisa MacLeod: No. Premier, that's another story. The problem is, when you're looking at this, you're looking at people's testimony, you're reading people's Hansard, you're living this committee every day, you're in the House and you're asking the questions, on one day we get one answer from you and on another day we get another. Then, of course, we have other deputants who are impartial, who come to us and contradict your storyline. By the way, you've contradicted yourself today. That is the issue.

If you're telling us in this committee that you didn't get the proper briefing materials, that you weren't told what the true costs could be, and yet at the same time you're telling us that you acted in the best faith, that you were preparing for Steve Paikin, you have your staff, you've got all those documents and you're always prepared, why weren't you prepared when you signed that document to know what the true costs were for the taxpayers and ratepayers of this province?

Hon. Kathleen O. Wynne: Because that cost was not knowable. No one knew what that cost was going to be. It was impossible to know what that exact cost was going to be, and you are well aware of that. I have said that, and that has been said consistently by people in front of this committee. There was no way to know the exact cost.

Ms. Lisa MacLeod: Are you done?

Hon. Kathleen O. Wynne: Absolutely.

Ms. Lisa MacLeod: No questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod, and thank you, Premier, for your presence, patience and endurance. We look forward to your next visit with us, should there be any. You are respectfully dismissed.

If there is no further business before the committee—seeing none, the committee is adjourned.

The committee adjourned at 1634.

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Standing Committee on Justice Policy

Members' privileges

Comité permanent de la justice

Privilèges des députés

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Clerk: Tamara Pomanski

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 5 December 2013

Jeudi 5 décembre 2013

*The committee met at 0831 in room 151.*MEMBERS' PRIVILEGES
ONTARIO POWER AUTHORITY

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy officially to order. I'd invite our first presenter to please come forward: Mr. Jim Hinds, chair of the Ontario Power Authority, who will be affirmed by our Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Jim Hinds: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hinds. As it's a repeat engagement, I know you know the protocol. You have five minutes for your opening address, beginning now.

Mr. Jim Hinds: Thank you, Mr. Chair. My name is Jim Hinds. I've been chair of the Ontario Power Authority since December 9, 2010. From June 2005 until December 2010, I served as the director and chair of the board of IESO.

I previously appeared before this committee on June 4, 2013. At that time, I discussed two of the lessons learned from the gas plant cancellation and relocation decisions. The first lesson was the need to align planning and siting decisions with current conditions in the electricity system. Progress has since been made, with the release of revised planning and siting recommendations on August 1, 2013, and the release of the second long-term energy plan on December 2, 2013. The second lesson involves greater transparency about the electricity system and the need to improve electricity literacy. Work is under way to achieve these objectives, with the formation of OPA's stakeholder advisory committee and negotiations with the Ministry of Energy to create a memorandum of understanding governing, among other things, our communications protocols. More work remains to be done, but I am pleased with the progress on these initiatives.

I'd like to use the balance of my time today to raise three other issues with the committee to consider in the drafting of its report.

Issue number one: Ratepayer-taxpayer distinction is important. I want to reinforce the distinction between

"ratepayer" and "taxpayer." The business of the electricity system, funded by the ratepayer, is separate and distinct from the business of the government of Ontario, funded by the taxpayer. The electricity business costs the ratepayers of the province about \$16 billion a year. The government of Ontario is a \$150-billion-per-year enterprise. The electricity business has one simple product: electricity. The government of Ontario has many different products and services provided to its taxpayers and its citizens. It juggles competing social, political and economic priorities. There are about 4.5 million ratepayers in the province. They pay for their electricity through their bills. There are about 13.5 million citizens in the province, virtually all of whom are taxpayers in some form. There are many ratepayers who are not taxpayers. Schools, universities, hospitals, municipalities, churches, charities, unions, co-operatives and the provincial government itself are all electricity customers but not taxpayers. The government is at least nine times bigger than the electricity business. Loading costs of government onto the ratepayer can overwhelm the rate base. In one example, industries which are heavy users of electricity are extraordinarily sensitive to increases in electricity costs. Increases in such costs can cause the decline and loss of these industries, as well as the employment which comes with them.

Issue number two: consistent standards for document disclosure. Committees of the Legislature play an important role in our democratic process. Through a committee's power to require testimony of witnesses and disclosure of documents, a committee can shed light on important matters of public interest. In carrying out its business, however, a committee should have regard to considerations of fairness and proportionality and the public interest. Reasonable timelines for document disclosure, techniques to manage commercially sensitive information, techniques to determine which information is relevant to the mandate of the committee, the confidentiality of matters subject to litigation, processes governing redaction of sensitive and non-relevant information, the right of solicitor-client privilege for witnesses to the committee, whether witnesses to the committee have any charter rights at all—these are just a few of the important issues which have been addressed at estimates, public accounts and this committee. There should be a thoughtful and careful delineation of these rights and privileges based on the work done to date. Your committee can play an important role in clarifying and codifying the way in

which information is handled before legislative committees in the future.

Issue number three: former Minister Bentley and contempt of the Legislature. It is my understanding that one of the roles of this committee is to make recommendations with respect to the prima facie motion for contempt of the Legislature facing former Minister Bentley. At the time of the disclosure orders by public accounts committee and by estimates committee in May 2012, OPA and the government were engaged in serious commercial disputes with TransCanada and Eastern Power. Premature and one-sided disclosure of our negotiating positions would have harmed the public interest and would have benefited the other side. The metaphor of a poker game is apt. Had we been required to lay all of our cards down on the table, the other players could have used it to their advantage. In any event, the relocation negotiations were successful and the relocated plants are in the process of being built. We should have about 1,200 megawatts of gas generation available to join the fleet in 2017 or 2018. These plants will be available to service the needs of Ontario ratepayers for two decades and beyond.

Thank you for the opportunity to speak a second time. I'd be pleased to answer your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hinds. To the PC side: Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Mr. Hinds, for joining us this morning. I want to start with a question based on the Premier's testimony the other day, where she repeated the refrain many, many times that they received advice not to go to litigation, that litigation would be bad for them. We also know, based on the auditor's report and subsequent testimony from people from the OPA, that you advised them not to build the plant in Napanee. Aren't you the Ontario Power Authority? Why is it that they chose to ignore your advice on where they would relocate this plant, when clearly you did not believe Napanee was the right place to build this plant?

Mr. Jim Hinds: Mr. Yakabuski, let me respond to your question, but I'm going to unpack it a little bit because it's got two prongs to it. The first thing, on the timelines: Our advice was extraordinarily dependent on where we found ourselves in the negotiations at the timelines. The question of litigation in respect of the Oakville facility was a question that got largely wrapped up when we signed the arbitration agreement in August 2011. The question of where the plant itself would be relocated was about a year later, September 2012. So I would just say there was a time distinction there.

Mr. John Yakabuski: I understand that, but my question is, why does she place so much weight on the advice of one group of people and ignore the advice of the very entity that was created to supposedly remove the politics out of power decisions in the province of Ontario? First of all, you guys were not in favour of cancelling this plant in the first place. Correct?

Mr. Jim Hinds: That is correct.

Mr. John Yakabuski: And even though your testimony the last time you were here says—in an exchange with Mr. Delaney, you say the reason for the cancellation derived from the fact there was no need for the plants anymore.

Mr. Jim Hinds: I don't believe I said that. That would be inconsistent with positions—

Mr. John Yakabuski: It is totally inconsistent.

Mr. Jim Hinds: Sorry, I don't believe I said that. Did you say that was my testimony, Mr. Yakabuski? May I see the reference, please?

Mr. John Yakabuski: "All the way through—in fact, earlier in the discussion"—this is from June 2013—"The plant was no longer required. We don't need the power." You talked about, in your opening letter, that it would have been needed, in the crisis from 2004 to 2007—but 'doing it when supply is in good shape is quite another.' ... —that 'the plant was no longer required' as the reason that you were cancelling the plant. This is Oakville now. This was just a few minutes earlier, in his question to you."

That is actually Vic Fedeli paraphrasing things that you have said. So you were never of the belief that this plant was not needed?

Mr. Jim Hinds: Mr. Yakabuski, I don't agree with that paraphrase. My view consistently has been that the Oakville plant was wanted for system. When I got to the OPA in December 2010, the decision had already been made to cancel the plant in Oakville and to relocate it. In terms of what I saw when I was at the OPA, we drove consistently and worked very hard to get this plant relocated in the best way that we could.

As to your earlier question about the role of the OPA and reliance on advice, we have a particular perspective, as I mentioned: ratepayer, taxpayer, system planning, the things that we do; we bring that. But these decisions are government decisions that involve a lot of other aspects of the electricity system and the political system and the economic system. We try to represent our view, but the government can choose who it listens to when it gets into making these decisions. We've always tried to represent the ratepayer view.

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Mr. John Yakabuski: So it is your contention that the power plant is still needed?

Mr. Jim Hinds: It's my contention—

Mr. John Yakabuski: In Oakville—power is still needed in Oakville?

Mr. Jim Hinds: —that the power plant was needed for system needs, was wanted for system needs over the time horizon that we were required to plan.

Mr. John Yakabuski: And that would be borne out in the fact that now we're building transmission to bring this power back to Oakville. We'll have to build transmission to transport this power back to where it was needed in the first place.

Mr. Jim Hinds: That is correct.

Mr. John Yakabuski: Which, again, leads us to the inescapable, undeniable conclusion that this was totally a

decision based on politics, not based on power needs or the advice of the very entity that was created to advise the province on these issues. It was completely a political decision that we now know, based on the Auditor General's report, is going to cost us \$1.1 billion.

I know you may dispute those numbers. The Premier has accepted the details, the findings of the auditor's report. I know the Liberal members have tried to dispute those numbers, but I think the people in Ontario believe the auditor because she is the one person who has no skin in the game. Other than putting forth dependable, supportable numbers—that's her reputation. She has no political skin in the game. I must say that the government obviously does and, to some extent, so does the OPA because their credibility is always a question. If you make good decisions, people view you as being a reasonable and valuable entity. If you make bad decisions, you'll live with the consequences of those as well.

So she has no skin in the game. She's come up with the numbers. So a political decision by this government is, without question, the reason why we're \$1.1 billion poorer, or will be over the next 20 years.

Mr. Jim Hinds: Mr. Yakabuski, again, there are two components to your question. I'll address the first one. It's fairly clear to me, from the former Premier's testimony, that it was a political decision, and I saw nothing inconsistent in that in my time at the OPA. But again, I would say that in respect of the Oakville plant, I wasn't actually at the OPA at the time the political decision was made.

In the second part of your question, with respect to the Auditor General, as you anticipated, we have differences of methodological opinion with the Auditor General, and I can go into those in detail if you'd like me to. But we—

Mr. John Yakabuski: Well, I know the way that you factor the rate of interest—

Mr. Jim Hinds: In respect of Oakville, again we have to be very careful with the numbers.

Mr. John Yakabuski: The terminology—

Mr. Jim Hinds: In respect of Oakville, the actual numbers the Auditor General used are \$40 million in sunk costs and \$635 million in other costs, for a total of \$675 million of total cost, and our numbers—we agreed on the sunk costs for Oakville. Our other cost estimate was \$270 million, which takes the total to \$310 million. So the difference is explicable by two factors: one is the difference in discount rate, \$90 million of the—\$365 million is the discount rate, and the \$275 million of difference relates to different assumptions that we made about the start dates of the different facilities based on questions that we had to answer about that.

Mr. John Yakabuski: So you're not challenging the findings of the auditor. You're simply saying that you had different methodology?

Mr. Jim Hinds: Well, there are a number of different—there's a lot of stuff in the Auditor General's report. We respect the amount of work that went into it, and depending on the particular question, we might have a perspective on a difference or a clarification or a different

approach, but broadly speaking, when we try to reconcile the work that the Auditor General had done with the work that we had done on the Oakville plant, we came up with those two grounds as being our key methodological differences.

Mr. John Yakabuski: You made the—I mean, the decision was made, the contract was let out, I suppose, or signed in September 2009 to build the Oakville plant—September or October 2009 to build the Oakville plant.

Mr. Jim Hinds: I believe so.

Mr. John Yakabuski: So all of the conditions, in your opinion—and I would have to conclude that in the minds of the government at that time—still existed. The power needs were there. The need for the plant to be built was there in 2009. They signed a contract in 2009 and a scarce 12 months later, it's like the world changed, and all of a sudden, "No, it's not needed. We're going to cancel it."

You people are entrusted to operate like a business at the OPA. Correct? This is how you operate.

Mr. Jim Hinds: We're created by the Electricity Act.

Mr. John Yakabuski: Yes, but you're entrusted to run the electricity system like a business, not based on the whim of whoever happens to sit in a particular seat on one particular day. You're expected to show some consistency, reliability and long-term planning, and everything that you do should be defensible based on best business practices. Correct?

Mr. Jim Hinds: I don't believe that's what the Electricity Act says.

Mr. John Yakabuski: Well, I'm not saying that's what it says; I'm not quoting the act. But what is the purpose of the OPA, if not that? Just to do the bidding of the government on a whim?

Mr. Jim Hinds: The Electricity Act sets out the purposes of the OPA. It's created under the Electricity Act.

Mr. John Yakabuski: I understand that.

Mr. Jim Hinds: There are nine purposes. I can read through them, but I'm not sure that's helpful. They largely relate to three businesses: They relate to the long-term planning for the system, they relate to the procurement of new electrical generation, and they relate to the implementation of conservation measures.

The OPA has some aspects that look similar to a crown corporation or a private company—it has a board of directors and an organizational structure—but there's a lot of other stuff in the Electricity Act that talks about the relationship between government and the OPA. There are 23 subsections dealing with directive power in the—

Mr. John Yakabuski: We understand the directive power.

Mr. Jim Hinds: So if you'd ask me to give an overall endorsement that this looks like any private company I've ever been involved with in the private sector, no, it's quite different. The take-away on what the OPA does is it implements the government of the day's electricity policy.

Mr. John Yakabuski: We understand the government sets electricity policy. I'm not assuming anything, but

based on testimony I've had from other people at the OPA—and I don't know if you're allowed to answer this question—you still disagree with the decision that was made. Is that not true?

Mr. Jim Hinds: Perhaps that ties into the first part of your question earlier. So if I can address that question about need in the Oakville area, I think that the—and I wasn't there at the time the decision was made. I wasn't there at the time that the plant was commissioned. But from my review of that, and from my work at the OPA subsequent to my arrival and assessing those things, it was perceived—in the time frames that we deal with, which are five, 10, 20 years, sometimes as long as 40 years—that there was going to be—

Mr. John Yakabuski: Until the government changes it because they think it's politically expedient to come up with a new short-term long-term energy plan.

Mr. Jim Hinds: There was going to be a need for electrons in the Oakville area to support the economic growth of the community. From a purely systemic point of view, that was the optimal place to put it. There's a mantra in the electricity business: You put the supply where the customers are. So—

Mr. John Yakabuski: So back to the question: You still believe it was the wrong decision?

Mr. Jim Hinds: Which decision?

Mr. John Yakabuski: To cancel the plant and relocate it.

Mr. Jim Hinds: It would have been our preference to have had the plant there. You've had the testimony of all the people who were around at that time. I've reviewed that testimony, but you've had the benefit of actually having heard it, and—

Mr. John Yakabuski: I wanted to hear it from you.

Mr. Jim Hinds: Yes, but I have no personal knowledge that's any different than the people who were there when the decision was made.

Mr. John Yakabuski: You hold a different title—and I appreciate you being in front of us. But what it comes down to, Mr. Hinds, is that the decision that is now destined to cost—depending upon your viewpoint, but I'll take the Auditor General's—the taxpayer and the ratepayer in the province of Ontario was clearly done without justification from the point of view of sound power-system planning; it was done for political reasons, period.

Mr. Jim Hinds: Again, Mr. Yakabuski, I wasn't there, so I don't know the history of it.

Mr. John Yakabuski: I'm going to have one final question, and then I'm going to pass it over to my colleague Ms. MacLeod.

I don't think there's anybody in Ontario who believes the scenario that has been presented to us by the political masters here in Queen's Park. Is it even remotely possible, with decisions of this magnitude and information of this importance, that nobody—even though Colin Andersen said everybody knew, the political masters, the former Premier, the current Premier, other ministers, denied that they knew the cost of this. I know you've

testified that you knew that there was an offer to TransCanada of \$712 million, I believe it was, at one point in the negotiations. Is it even remotely possible that these people didn't know anything?

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Mr. Jim Hinds: Mr. Yakabuski, in respect to that question, I am not going to speculate on whether people knew or how the government chose to communicate or how the government even within itself communicates. All I can speak to is that when I was at the OPA and I looked at the information that we were preparing at the various stages of this, we were cognizant that there were going to be many different categories of cost, depending upon the plant and depending on which stage it was and depending on where the plant was ultimately going to be relocated.

I think there has been a lot of testimony from the OPA folk about how difficult it is to make these estimates.

Mr. John Yakabuski: Thank you. I'm just—

Mr. Jim Hinds: Can I go back to answer your other question on the \$712 million?

Mr. John Yakabuski: Yes.

Mr. Jim Hinds: Yes? Okay.

On the \$712 million, that was at a particular point in the negotiations of about April 2011. The letter to TransCanada cancelling the contract was October 7, 2010. In April 2011, we were on the verge of being litigated by TransCanada—"we" being the OPA—and also I believe the government was about to be litigated. In fact, subsequent to that, I think a notice of intention to sue the government was received by the government, I believe.

The point where we were at when the \$712 million discussion came to was we were trying to assess, if we got sued, how much we were going to get sued for. What's the magnitude of their claim? It's a fairly common practice when you're a company or an agency and you get litigated. The first question is, "Have they got a point?" The second question is, "How much are we talking about?" That \$712 million number came up in the context of "How much are we talking about?"

Mr. John Yakabuski: So people would have known of that potential.

Mr. Jim Hinds: We certainly knew within the OPA, but I can't speak to what the government knew. They were being separately litigated.

Mr. John Yakabuski: These people can change your direction on a whim. They can tell you to cancel a plant because "We want to save a seat." But they don't know that there is a potential of a hundreds-of-millions-of-dollars lawsuit? You strike me as a very reasonable and methodological person. I think you'd want to expect that the people who are your ultimate bosses have some level of competency, that they actually care about what's going on and what the impacts to the people of Ontario could be.

I mean, we're talking about potentially, and as we found out in the end, over a billion dollars, but even at that point, negotiations with TransCanada—I mean, the decision was made by the political masters to build this

plant in the first place. They took a political decision. That was an announcement made by the then energy minister way back in 2005 or so. They were going to build a plant in Oakville. They may have used you guys as the—I'm not even sure if you guys were here yet when that first decision was made. I would have to get the calendar out.

Mr. Jim Hinds: We were not. It was a contract that was originally entered into by the Ministry of Energy and transferred over to the OPA.

Mr. John Yakabuski: There you go. So they made the decision, a political decision, to put a plant in Oakville, and then everything is—

Mr. Jim Hinds: Oh, sorry. I misheard that. In Oakville's case, we were there. I apologize.

Mr. John Yakabuski: Yes, okay.

Every decision was ultimately made by the government, and then they somehow don't know that there's this potential of this massive hundreds-of-millions-of-dollars lawsuit that could severely impact the electricity bill for the ratepayers for a long time going forward? And we know now that it's going to.

I understand why the people out there are so upset about this issue, because they shake their heads as a group of common-sense individuals who have to manage their own homes on the basis of being able to balance the right hand and the left hand, being able to balance the pros and the cons. When they make decisions, they recognize that the consequences if they make bad ones can be devastating for their own home or their own finances or their own business.

The government—they just seem to have taken this thing as, "The taxpayer is a toy, the ratepayer is a toy, and we'll play with it any way we want if it means that we can advance our political agenda." I guess I'm wondering, the people at the OPA, did they not feel angry about this? Did they not feel that they were being used as a political pawn in the game of brinkmanship by the Liberal Party to try to secure a political victory? And they're using the OPA almost as a tool to play politics, as opposed to a tool that was designed to actually bring some sense and some uncluttered vision to electricity planning for the province of Ontario?

Mr. Jim Hinds: Mr. Yakabuski, there were several points in your question. On the first point, in terms of the role of the government and the role of the OPA, I would step back to my opening remark, which is that we're electricity system people. We have a pretty simple job compared to you folks. You folks have to juggle important social, political, environmental—I mean, the laundry list is huge. We've just got to make sure that the lights go on when people hit the switch on the wall.

Mr. John Yakabuski: You're being very humble.

Mr. Jim Hinds: It's a tough job. I'm not disparaging that. There's a lot of machinery that goes behind the magic of the electricity system; we're just a little part of it, but that's what we focus on doing. I can't speak to the role of government in this.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Yakabuski. To the NDP side: Mr. Tabuns, you now have the floor.

Mr. Peter Tabuns: Mr. Hinds, thank you for returning to the committee. I appreciate it.

Mr. Jim Hinds: Mr. Tabuns, good to see you again.

Mr. Peter Tabuns: A few questions that came out of the questions that the Conservatives posed, and then I'll go on to my main body. Did the OPA recommend going to arbitration with TransCanada in the summer of 2011?

Mr. Jim Hinds: Yes. Well, we went into arbitration with TransCanada in the summer of 2011. At that point in the timeline, before we entered into the arbitration agreement in the summer of 2011, we were either actually being litigated or threatened to be litigated by TransCanada.

The arbitration agreement, and presumably the litigation as well, would have had at least three counterparties. It would have been TransCanada suing the government and TransCanada suing the OPA. So, in respect of the interests that the OPA represented, we believed at the time, and still had consistently believed throughout the process, that it was better use of ratepayers' money to relocate the plant than it was to potentially lose a lawsuit and pay out liquidated damages. We were supportive of entering into an arbitration agreement to try to resolve the quantum of difference with TransCanada and, in a parallel process, hopefully engage them in negotiations to relocate the facility.

Mr. Peter Tabuns: Okay. The directive power that you referred to when you were looking at the Electricity Act—I didn't see a directive issued for the cancellation of the Oakville contract. Are you often given instructions without directive? And I mean substantive instructions on taking on contracts or letting go of contracts.

Mr. Jim Hinds: It's a very good question. I think that it would differ depending on the circumstances facing us. I can speak to the circumstances of Oakville and, to some extent, Mississauga, and then move more generally.

Mr. Peter Tabuns: Okay.

Mr. Jim Hinds: It was the view of our counsel that in the circumstances of Oakville and Mississauga, where we had run a procurement, where we had awarded a successful victor and where we had signed an agreement to construct a plan, the minister could not have given us a directive that would have breached those contracts. It was the view of our counsel, looking through those subsections of directive power, that a ministerial directive would not have been effective to breach those contracts.

Mr. Peter Tabuns: In other words, they didn't have the legal authority to give you a directive contrary to one they had already issued. Once they had given you the direction, once you'd done the RFP, it was in your hands and they didn't have the legal authority to stop you.

Mr. Jim Hinds: I'm not entirely familiar with the process through that, but I think that the general policy-level issue is that once you've given somebody a contract that promises them something, and they've promised you something, a government can't issue a directive to breach that, because it would be breaking a deal.

There are only a couple of different ways out for a government that changes its mind. One of them is to negotiate its way out. The other is to be sued and to defend itself in that. The third way is to legislate its way out.

Mr. Peter Tabuns: But in all of those circumstances, the government didn't have the legal authority to issue a directive to you to abandon the contract.

Mr. Jim Hinds: That's my understanding. Correct.

Mr. Peter Tabuns: Okay. On October 29, just a few short weeks ago, Colin Andersen told the committee about a letter the OPA sent to TransCanada guaranteeing its profits. He said, "So we drafted a letter which was consistent with our understanding of the contract and started the process of sending the letters back and forth to—Calgary, I guess, is where they were.... Ultimately, we ended up on the phrase 'anticipated financial value of the project,' which goes beyond what the contract would have allowed." Was the OPA bound by that letter that they sent to TransCanada?

0900

Mr. Jim Hinds: Yes, and you're referring to the letter of October 7, 2010?

Mr. Peter Tabuns: Yes, I am indeed.

Mr. Jim Hinds: Actually, I'll just correct one part of that. The precise words of this are very important. It was the anticipated value of the contract, not the project, that was a source of some subsequent argument with TransCanada. But, yes, with that correction as read.

Again, I was not there when the letter was written or sent—

Mr. Peter Tabuns: No. I understand that.

Mr. Jim Hinds: —but when I got there, and I read the letter, just my common-sense understanding in reading that letter was, it looked pretty conclusive to me.

Mr. Peter Tabuns: That at that point the OPA was bound?

Mr. Jim Hinds: Yes. I think if I had put myself in TransCanada's shoes as a recipient of that letter, I would be put on notice that my contract had been breached.

Mr. Peter Tabuns: Do you know how the OPA was instructed to abandon this contract?

Mr. Jim Hinds: I do not. I wasn't there. I believe the committee has had the testimony of many people who were around that decision at that time.

Mr. Peter Tabuns: When you became chair, were you told that the OPA was obliged to protect the anticipated financial value of the contract?

Mr. Jim Hinds: When I became chair, I read those words. Being a business person, they were pretty clear to me. In the subsequent period of the threatened litigation leading up to the arbitration agreement, we referred back to those words quite frequently.

Mr. Peter Tabuns: At that point, there was no option on protecting the profits of TransCanada; you had committed yourselves to that?

Mr. Jim Hinds: There was a lot of legal analysis of that question, and my recollection of the conclusions of that legal analysis is that those words were pretty clear.

Mr. Peter Tabuns: Okay. In the contract, I gather there's a section that protects the OPA from being sued over the loss of profits on a contract that's cancelled. Are you aware of that?

Mr. Jim Hinds: I am only aware of it because of my review of the testimony of people here and also reading the Auditor General's report on Oakville. I think that the section you're referring to in the original was the force majeure stuff, or was it the other one, the lost profits?

Mr. Peter Tabuns: Lost profits.

Mr. Jim Hinds: In the event that certain things happened. So my passing familiarity is only based on the Auditor General's report and reading it. But I was dealing, when I got into it, with the facts as they were at the time. With the letter having been sent and the contract having been breached, our general advice was that those provisions were inoperative and that we were in a whole new ball game.

Mr. Peter Tabuns: When the OPA, as I understand it, received verbal instructions to abandon this contract, did the OPA board do due diligence? Did it undertake an assessment of the risks and advantages?

Mr. Jim Hinds: Mr. Tabuns, I'm unable to answer that question. Again, my review of that time period was, I got the letter, I read through the minutes of the board meeting the day that the decision was made to send the letter, and that's about the extent of my personal knowledge.

Mr. Peter Tabuns: Okay.

Mr. Jim Hinds: I think you've had testimony from the people that were at the OPA at that time—quite extensively, I believe.

Mr. Peter Tabuns: The Electricity Restructuring Act says:

"25.5 Every director of the OPA shall, in exercising and performing his or her powers and duties,

"(a) act honestly and in good faith in the best interests of the OPA; and

"(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances."

Do you believe that your board was put in a position where protection of ratepayers and the OPA was set aside at the instruction of the government?

Mr. Jim Hinds: I can only speak to the times that I was there because those are the times of which I have personal knowledge. The key decision points on the various times that I was there would have been the arbitration agreement, entering into the arbitration agreement—that would have been a pivotal time. Although it was a difficult decision, I believe it was a good decision. I believe that the interests of the ratepayer are better served to have a plant than the lawsuit damages.

The other pivotal time would have been how we reacted to the cancellation or announced cancellation of Mississauga. I believe that put the board in a very difficult spot, perhaps exactly addressing the issues that you just raised to me. We did the best job that we could in the circumstances on that one. Then, ultimately, I guess the

final two key decisions were supporting the relocation decisions, both of Oakville and of Mississauga.

Mr. Peter Tabuns: Let's shift over to Mississauga for a moment. When you, as a board, were made aware that the government was now going to cancel this second plant, what was the nature of the discussion at the board about the wisdom of the decision and the impact of the decision?

Mr. Jim Hinds: I already said previously that I got a phone call from a Liberal campaign volunteer at about 8 o'clock on a Friday night before it was in the—he said it was before it was going to be in the campaign promises of the Liberal Party during the election. So we huddled as a management group. The board had not had a chance to meet and say, “What does this mean?” and review all the possible things. Given that it was the chaotic nature of a political campaign, it was very hard to prejudge how that was going to turn out.

After the election, we were faced with the question of how to respond to what government-stated policy was, and the government's stated policy at that time appeared to us to be that they were, in fact, going to cancel and push to relocate the plant.

I think what was perhaps slightly different in the second plant, in the Mississauga plant, is that we really wanted greater specificity about their stated intentions and how the implications of that were going to play out. So we had an exchange of correspondence. The original letter was from the minister. He addressed us and he sent it to Colin, and I responded to Minister Bentley, and then Minister Bentley responded back to me. I think former Minister Bentley had correctly exchanged that as, “Get working on relocating the plant.” I sent a letter back, saying, “Who's going to pay for this?” He sent a letter back to me, saying, “We'll talk about it”—and that's a correct characterization of the exchange.

Mr. Peter Tabuns: So those specifics were missing from the Oakville process?

Mr. Jim Hinds: Well, on the documentary side they were. Again, I wasn't there, but I think that when I reviewed Colin Andersen's testimony about the time there, I think Colin had mentioned that there was a clear statement of government intention to relocate the plant. So the only difference between the two would have been that we had that manifested in a document and with perhaps more articulation on it.

Yes, I think the piece that was missing was perhaps the ratepayer-taxpayer question. But, frankly, this has been done so seldom that I'm not even sure at that point anybody was thinking concretely about that issue, which is, “How do we allocate the cost between the rate base and the tax base on this one?” That manifested itself in the Oakville situation in a letter that during my previous testimony Mr. Fedeli spent a lot of time asking me about. It was appended to the arbitration agreement in August 2011.

Mr. Peter Tabuns: Generally speaking, does your board follow the lead of the executives?

Mr. Jim Hinds: Generally speaking, what our board would do, and the way that it works, is it would ask man-

agement for a recommendation. Sometimes management is able to give that; sometimes management is unable to give that.

Mr. Peter Tabuns: Did it give recommendations in the case of Mississauga?

Mr. Jim Hinds: I think that was one of those cases where the management was unable to come up with a recommendation about what the OPA's role should be in the cancellation of Mississauga.

Mr. Peter Tabuns: What was the nature of the debate, then, on the board about how to respond in the absence of an executive suggestion or proposal?

Mr. Jim Hinds: Well, I think from the OPA's point of view—we're talking about roughly October, November of 2011 here. I think from the OPA's point of view, we had the overall choice of getting involved or not getting involved because we had not yet been instructed to breach the contract.

Mr. Peter Tabuns: Right.

Mr. Jim Hinds: So I guess what we could have done is, we could have said, “No, it's nothing to do with us,” and walked away from it.

The difficulty with doing that is that we did have a contract with a counterparty. From a legal point of view, that counterparty did nothing wrong. We have a lot of contracts with counterparties. We've got 20,000 of them, roughly. So we thought about our obligation to represent the counterparty's interests. We knew that litigation was still an option, and I think, as said before in the case of the Oakville plant, our bias was always to try to renegotiate rather than litigate. We also knew that from a system point of view we wanted that facility somewhere on the system to support the customers.

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Mr. Peter Tabuns: Were you subjected to significant pressure by the Liberal government to back off on the Mississauga plant, to end the construction?

Mr. Jim Hinds: Me personally?

Mr. Peter Tabuns: Sorry, your board. You and your board, as a group.

Mr. Jim Hinds: I can't speak to when our board actually talked to other people, but I know in our case, when our board decided to try to be involved in the relocation negotiations—and also to represent the interests of the contract holder that we were in contract with—there was a lot of stuff going on at the time.

One of the things that was going on that was quite difficult for us to manage was the continued building of the facility. I believe that in Mr. Vogt's testimony he talked about how he had contracts that he had to honour. I didn't know that going in, but we certainly saw the cement trucks rolling up and the rebar going in. That created a communications environment, a media environment, that was extraordinarily difficult.

I got a phone call on November 18—I think I mentioned this in my previous testimony—from Jamison Steeve. I was in an airport; it was a difficult conversation, but the recollection I took away from that was that we'd better get some agreement to move forward with this or

we're going to run out of time here. That was the nature of that.

So yes, there was a lot a political angst about them.

Mr. Peter Tabuns: Did the Premier's office do an end run around the OPA when it came to the Oakville contract? Were you essentially left out in the cold while substantial negotiations went on between the Premier's office and TCE?

Mr. Jim Hinds: I can only speak to the time that I was there; I can't speak to that before. But one of the issues that became an issue for us in about the March-April 2011 time frame was the threatened litigation from TransCanada. I think you can see from the testimony of the various people that there was an attempted negotiation between OPA and TransCanada to try to see if it made any sense to relocate this plant into the Kitchener-Waterloo-Guelph-Cambridge area. And so the OPA people were running away looking at the electrical needs of that area and the TransCanada people, of course, had their breached contract that they were trying to sort out.

What the government was doing in that time frame became an issue because—and again, not me personally, but my understanding from OPA staff was that TransCanada was claiming to our people certain things that the government was saying about the breach, the relocation, all kinds of things. Our people had no way of confirming that or not.

I think, perhaps in my earlier testimony, in response to a question from Mr. Delaney, one of the things that I did was I did meet with Jamison Steeve, Sean Mullin and Craig MacLennan and asked them, "What's going on here? What are they saying?" The answer that I got back wasn't clear to me that TransCanada was talking to those people or that they were not telling me what TransCanada was telling them. So I came away scratching my head a bit, wondering if we weren't being gamed by TransCanada.

Then we said, "Okay," and we went through a series of three board meetings in March and April, and out the other—it's like, "Okay, well, let's sit down with these TransCanada guys and let's talk about how much they think they're owed and why they think they're owed that, and whether this can be resolved in the context of a peaker plant in another location that we want it in."

Ultimately, it turned out not to work out. Ultimately, those negotiations fell apart and then we ended up revisiting the arbitration agreement.

Mr. Peter Tabuns: Last question from me, and perhaps my colleague will have some: The auditor noted that the arbitration agreement substantially gave the upper hand to TransCanada Enterprises. Is that something that you accept and acknowledge?

Mr. Jim Hinds: There are two perspectives to that. One is, I'm not in a position to comment. There were three signatories to the arbitration agreement: TransCanada, the government and OPA. So vis-à-vis the government and TransCanada, I'm not in a position to comment on that.

From a purely OPA perspective, I think the arbitration agreement allowed us to at least have a civil conversation

that ultimately led to the successful relocation of the plants. In the absence of the arbitration agreement, I believe that we'd be in the courts right now, and that process could have gone on for 10 years or more, and we could have lost.

In my view, most of the provisions that would have impacted the OPA—most of them—were dealt with by the contents of the letter that was sent to TransCanada on October 7, 2010, basically notifying them of the breach of the contract.

Mr. Peter Tabuns: I have no further questions at this point.

Mr. Gilles Bisson: And I have no further time.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson and Mr. Tabuns.

Mr. Delaney for the government side.

Mr. Bob Delaney: Good morning, Mr. Hinds. Welcome back.

Mr. Jim Hinds: Good morning, Mr. Delaney.

Mr. Bob Delaney: I want to thank you for bringing this document with you, the very extensive spreadsheet. Do you want to have a few minutes to talk about it?

Mr. Jim Hinds: Thank you. I appreciate the credit for having brought it, but I didn't, in fact, bring it. It was provided separately to the Clerk of the Committee by the hard-working folks at the OPA.

Mr. Bob Delaney: Okay. I'm not suggesting for a moment that you sat down at Excel and did it personally, but are you familiar enough with it to discuss its contents?

Mr. Jim Hinds: Yes. Maybe by way of context, I think this document was created because of a question raised by Ms. MacLeod in discussing with Colin Andersen about the bill impact on the average Ontario ratepayer, and so this spreadsheet is an analysis of that question and an answer to it, or a partial answer to it.

Mr. Bob Delaney: I'm looking at it now, and what this does is to take all of those costs, and it appears that it has used the OPA's estimates, and it has done the same analysis for the Auditor General's estimates, and it allows what seems to me to be a valid side-by-side comparison, sort of an apples-to-apples comparison, of the two estimates. Would that be an accurate summation?

Mr. Jim Hinds: That was our intention.

Mr. Bob Delaney: Is there anything that you'd like to walk me through on it before I ask you a few questions on it?

Mr. Jim Hinds: First of all, I think it's a response to a very good question. I would indicate that in that response, the question was, "How is this going to impact?"—I believe it was the men and women in—

Ms. Lisa MacLeod: Manotick.

Mr. Jim Hinds: Thank you. Manotick.

So let's assume that the men and women in Manotick are average Ontario ratepayers, and assumptions about what that means are contained in the spreadsheet about their average consumption. That ratepayer would be facing, on present numbers, an annual electricity bill of about \$1,501, and so the impact of these decisions, if you

use the OPA's numbers, would be about \$1.03 a year, and if you use the Auditor General's assumptions, we model her assumptions to be \$2.01 a year.

Mr. Bob Delaney: And that actually mirrors some of the ballpark estimates that I had made, which is that it would be a spread in which the auditor's numbers were about twice yours.

Just to get some clarification on that, you say here, "Average rate over the period (discounted to 2013 \$/MWh)". That's 11 cents. Correct?

Mr. Jim Hinds: Yes.

Mr. Bob Delaney: Okay. So in that electricity costs are billed in kilowatt hours, if I simply shift the decimal point three to the left, what you're saying is that, to a ratepayer in Nepean, this would mean \$0.00011 per kilowatt hour in additional costs. Correct?

Mr. Jim Hinds: I did not prepare the spreadsheet. I just wanted to make sure that the question was answered.

Mr. Bob Delaney: No, no. That's fine.

Mr. Jim Hinds: And I thought it was a reasonable question, and I think it's a good answer.

Mr. Bob Delaney: I think it's a great answer, actually.

Mr. Jim Hinds: In terms of going back through this thing, when I did my own calculations on the back of an envelope—

Interjection.

Mr. Jim Hinds: The number that I did on the back of an envelope was about a sixth of a basis point.

Mr. Bob Delaney: Okay.

Interjection.

Mr. Bob Delaney: Chair, I didn't interrupt this gentleman when he was asking questions. May I ask for the same consideration? Thank you.

So, Mr. Hinds, in looking at all of the numbers here, you're showing the specific points in time where not only costs are incurred, but savings are incurred, and what you've done in the highlighted calculations at the bottom is use the Auditor General's estimates and the OPA's estimates to show that to the average ratepayer, this would be \$1.03 a year if the future mirrors the OPA's estimates, and \$2.01 a year if the future mirrors the Auditor General's estimates, and somewhere in between if reality lies somewhere in between.

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Mr. Jim Hinds: Yes. Now, just one comment on that, because this is a complex calculation, and precision is needed: That is the net present value impact of the average bill. So the timing of the cash flows is actually important, and that's one of the areas that we were different from the Auditor General on. That explains the difference between the two of them. But other than that, yes, your question is correct.

Mr. Bob Delaney: Okay. That, I think, is one of the most significant documents that the committee has received in the roughly nine months that we've been sitting, because it takes some of the numbers, which have been very large numbers, and says, "What does this actually mean to you?" I think that was your intent in creating—

Mr. Jim Hinds: Well, I didn't have an intent other than to answer the question, but I go back to my opening remarks, which were that we—as a system, as an aggregate, the electricity system—cost the ratepayer \$16 billion a year. That's a very large number. I wanted to make sure that people understood that these are large numbers; it makes them difficult to deal with. You've heard numbers in your testimony ranging from an installed base of assets of \$100 billion, \$125 billion, \$150 billion—these are very large numbers. That's one of the challenges of working in this sector: You're dealing with large numbers.

Mr. Bob Delaney: Exactly. You've actually covered an awful lot of the questions that I was going to ask you in your spreadsheet. Perhaps you could comment, now that you've had the ability to, in essence, crunch the numbers, on why it was that during that time the numbers kept changing. At the moment we've got some degree of—the numbers have stopped changing and they've become a little more fixed, and we can actually do this type of projection, but during the time that we were discussing, that time when the decisions on the plants took place, talk a little bit about why those numbers kept changing.

Mr. Jim Hinds: Again, I would be repeating testimony that the committee has already received, but maybe just to go at the question from a purely OPA point of view: Trying to nail down numbers depends very much on where you are and what you're asking about at the time. Trying to nail down numbers before you've cancelled plants is one thing; trying to nail down numbers after you've cancelled them but not relocated them is another; trying to nail down numbers if you're in an arbitration setting versus if you're not—because the numbers themselves are moving around and the circumstances of the numbers arising are moving around.

I think, generally, when the numbers that you're referring to, Mr. Delaney, were at issue, we were fairly certain of what the sunk costs would be in respect of both plants. I don't think we really had any issues with the Auditor General on that, because once the engineering costs and everything else were added up, the contract counterparties had informed us how much money they'd spent that was wasted.

The other categories of cost depended very much on what the questions were and what we knew about them. We couldn't answer relocation cost until we knew where it was going. So how can we do that?

The other thing that sort of depended—even once we got an idea of where it was going, we needed to get renegotiations done so that we could sit down with the proponents and say, "What's it going to cost to put it there?" We don't know. They're the ones who are going to have to figure out the engineering of the site. They're going to have to look at the soil. They're going to have to look at the zoning. They're going to have to look at access to the transmission system.

The answer to your question about why a lot of these costs take time to develop is that they take time to

develop. We need the facts underneath them and we need to do some analysis on them. I think, in previous testimony, Colin Andersen had said that it took 12 to 18 months to develop the cost implications of these things. That's approximately the time between the Oakville settlement in September 2012 and the Auditor General's report in September 2013. So I think that checks out.

Mr. Bob Delaney: I actually have to commend you on the quality of the analysis here. I think this is the first time we've been able to look at those projections that take a large number and say, "What does that large number mean, broken out year by year, and what is its impact on the average household bill?"

Mr. Jim Hinds: I'll pass that back to the folks at the OPA.

Mr. Bob Delaney: Yes, please do. Anyone who's ever done one of these spreadsheets understands the degree of complexity and the time that goes into it.

I'd like to just talk a little bit—again, stemming from the analysis that's done here—about the different start dates and how that affected the cost estimates, to the degree that you're able to speak to it. You used one set of start dates; the auditor used another. Could you talk a little bit about how those different start dates made a difference in the final numbers?

Mr. Jim Hinds: Yes, there are two questions for start dates. One is, when do you assume that the uncanceled plant would have come into service? The second question is, when do you think the relocated plants are going to come into service? Those are the two questions that have to get faced in answering that.

With respect to the first question, we took a different approach than the Auditor General took. We assumed that the plants would start on the dates in the contracts when they were committed to start. We said, "Okay, let's stay with the contract." That was our approach. The Auditor General took a different approach in terms of looking at intervening events and came up with her own decision on when those start dates were reasonable. We were apart there.

Then on the question of when the new plants would come into service, we again went to the contracts. We said, "Okay, when are they contracted to come into service?" The Auditor General, I believe, through her own investigation, came up with her own conclusion about when the relocated plants were going to come into service. That created differences in time.

The relevance in that was that in the present conditions of the electrical system, we have periods of surplus power. There is a net ratepayer benefit to actually not having those plants on the system at the moment because we wouldn't need them to operate at as high a capacity as we hoped they would have needed to when the plan was done. You have to make assumptions: If we don't have this plant, and we wouldn't have had to pay for it, you can save some money. She disputed that fact, and it was largely related to the start dates and the timing of market conditions that we assumed.

Mr. Bob Delaney: So these are shown in your analysis as the numbers in brackets, where you say "Ratepayer

annual relocation costs"; those numbers in brackets would represent net savings in that year. Correct?

Mr. Jim Hinds: Yes, that's exactly right. If you go to the first line of the spreadsheet and you move to the 2014 and 2015 columns and the 2016 and 2017 columns, you'll see brackets there. That would be one of the manifestations of our assumption about timing. Then if you go down to the similar line on the Auditor General's report, first row across, you'll see she zeroed out some of those, but in 2016 and 2017, she's got numbers there.

Mr. Bob Delaney: Okay. And then the same would apply to the total partway down, where you say, "Illustrative annual impact on residential ratepayers"—some years, where you've got a positive number, that would in fact be a net cost; other years, where you have a number in brackets, such as 2014, 2015, 2016—in 2014, you would show an \$11.1-million saving; in 2015, a \$12.6-million saving; in 2016, a \$12.5-million saving. Those would represent the net savings in those years just as, for example, in 2020, you're showing a positive \$2.6 million; that would be a \$2.6-million projected additional cost. Correct?

Mr. Jim Hinds: That's correct.

Maybe, Mr. Delaney, if I might at this point, there's been a lot of discussion today about the Auditor General. I would say, to her credit, that she gave me the opportunity to address these concerns directly with her prior to the publication of the report. I very much appreciate her having done that. That was a new experience for me, and it was good to have been able to make my case. I don't believe I was effective, but that's really her choice. I would say that I respect the work that she's done on this and I respect the opportunity of having been able to state my case.

Mr. Bob Delaney: Okay. The OPA used a 6% discount rate, while the auditor used a 4% discount rate.

Mr. Jim Hinds: Yes.

Mr. Bob Delaney: Okay. Maybe I'm pushing things a bit, but would you be able to say what difference that would have made in the calculations?

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Mr. Jim Hinds: Yes, \$90 million, so the difference— as I mentioned earlier, the difference between the two of us was \$365 million, and \$90 million of the \$365 million, so about a quarter, was due to the difference in the selection of discount rates. That was one of those arguments I lost with her.

Mr. Bob Delaney: What factors enter into the choice of a discount rate?

Mr. Jim Hinds: Well, I think it depends very much on the purposes for which it's done and what they want. I don't understand the nature of all of the concerns that were behind the Auditor General's choice of her rate, but I've made the case that in our choice of the rate, we looked for something like a weighted average cost of capital of the business. So if you're trying to figure out the weighted average cost of capital in the electricity business, you go to the Ontario Energy Board. It's comprised of the cost of debt and the cost of equity. The

Ontario Energy Board is fairly clear that the cost of equity is about 9.88% and the cost of debt is what it is. At current bond rates, it's about 5%. So if you assume that the typical cost of capital in the electricity business is comprised of half of each, you end up with a number that looks like about 6% to 6.5%. To test that, you say to yourself, "Okay. Well, could you go and borrow at 6% or 6.5%, or could you fund your projects at that level?" and the answer is, "Yes, you could."

I think the choice of 4% surprised me as being low because I'm not really sure I know anybody who can borrow at 4% on those terms, even the province of Ontario. But I defer—I made my case, and she listened to it, and she has other reasons. I understand, in her defence, that there is a concept in government called "social cost of capital," which would be different than perhaps the world that I'm familiar with, so I defer to that.

Mr. Bob Delaney: Okay. First of all, I again want to emphasize how important the document that you submitted is. It's really the first chance we've had to look at both the auditor's numbers and the OPA's numbers, on both of which, from the vantage point of the government, we've had to say, "Okay, you're the auditor," or "You're the OPA. We accept your numbers. Now, how do you lay them side by side and look at them?"

In effect, it allows us to see how reality unfolds and see which of those two sets of estimates came closest to what will happen in the years to come, and we'll only then be able to see how what both parties admit are estimates conform with the way the future unfolds.

Anything else you want to add on that?

Mr. Jim Hinds: I just hope I'm here to see it.

Mr. Bob Delaney: You and me both.

To talk a little bit about the memorandum of agreement with reference to the costs of the Oakville plant, the province relied on the OPA's approach when it announced its original cost estimates. Correct?

Mr. Jim Hinds: I'm sorry. Could I ask for clarification? So the memorandum of agreement was signed on September 24, 2012.

Mr. Bob Delaney: Yes.

Mr. Jim Hinds: It was released publicly that day. It was a big document. There were many schedules to the document, including a schedule of costs, I believe, appended to the memorandum of understanding, and the schedule of costs had a variety of different categories of costs appended to it, some of which we knew at the time were put in, the sunk costs, and the other categories of costs were with, I believe, TBD, which was short form for "to be determined."

Mr. Bob Delaney: Right.

Mr. Jim Hinds: So I think that was the document that went out publicly. I'd assume that the government knew that.

Mr. Bob Delaney: Yes. Very similar to what Colin Andersen said when he was last here. We discussed this in September. It says that the OPA would be "paying for the cost of the gas turbines as well as the gas management, but that there would ... be significant savings from a lower net revenue requirement."

Mr. Jim Hinds: Yes, that's correct. I think the actual numbers were that our target, NRR, without the consideration of who was paying for the turbines, was about \$17,200 per megawatt hour. I think we actually achieved a realized NRR on the new Napanee plant of about \$15,200 per megawatt hour. The treatment of the turbines was different. In the treatment of the turbines, part of that difference represents the fact that they were purchased differently, but that would be correct, yes. So that's one of the factors explaining the slightly different NRRs between the Oakville plant and the Napanee plant.

Mr. Bob Delaney: Chair, I understand I'm under a minute?

The Chair (Mr. Shafiq Qadri): Yes.

Mr. Bob Delaney: Thank you very much, Chair. We'll pick it up here on the next round.

The Chair (Mr. Shafiq Qadri): Thank you. Mr. Yakabuski, 10 minutes.

Mr. John Yakabuski: Thank you again, Mr. Hinds, for joining us. I was taken by surprise that I was asking questions to start, so I didn't even thank you for joining us, so I'll do it now.

Mr. Jim Hinds: Thank you, Mr. Yakabuski.

Mr. John Yakabuski: I did want to comment on the analysis of how it's projected this will impact the electricity bill of the consumers over the next—is it 20 years that you're factoring? It says here only 2022, but—

Mr. Jim Hinds: I'm dealing with a different copy, but the back goes out to 2038.

Mr. John Yakabuski: It's 2038.

Mr. Jim Hinds: Yes.

Mr. John Yakabuski: Okay. So we've got a different—oh, I see. Okay, we've got a second—yes, that's what I thought it was going to be, out to 2038.

I want to draw the analogy—and I hope I won't be challenged on it because I'm only speaking hypothetically. I've said it before: If somebody comes in and robs the Royal Bank of \$1 million, the impact to each individual depositor may not be that much, but they're still going to put that guy in jail when they catch him, and I think that's important to understand.

Mr. Bob Delaney: Chair, on a point of order.

The Chair (Mr. Shafiq Qadri): Mr. Delaney, point of order.

Mr. Bob Delaney: Has the member, in the opinion of the Chair, ascribed a motive or a wrongdoing to an individual?

Mr. John Yakabuski: I just said I'm speaking hypothetically. Stop the clock, please.

Mr. Bob Delaney: I'd like to ask the Chair on this particular line of questioning, which, to me, ascribes motive that is without basis.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney. It's likely less caffeine than I have in my system to adequately answer this question. Mr. Yakabuski, you are welcome to pose whatever question you like. I don't think the witness is required to ask—unless there is some new information about Royal Bank

robberies that I haven't come across in these committee proceedings. Please proceed.

Mr. John Yakabuski: Thank you. That's my comment, Mr. Hinds. I want the people of Ontario to analyze—\$1.1 billion is being taken out of their pockets as a result of this political decision, and I think they can all put that into context. If that amount of money was stolen, somebody would be going to jail.

Now, I'm going to pass the microphone to my colleague Ms. Thompson from Huron-Bruce.

Mr. Jim Hinds: Is that a question, Mr. Yakabuski?

Mr. John Yakabuski: It was not a question. It was a statement.

Mr. Jim Hinds: Then I will not say anything.

Ms. Lisa M. Thompson: It's very nice to meet you officially, and welcome.

Mr. Jim Hinds: Thank you, Ms. Thompson.

Ms. Lisa M. Thompson: With regards to the information that you shared today, would you be able to ask Mr. Andersen to table all the documents that were used to generate this estimate, the background information, please?

Mr. Jim Hinds: Mr. Chair, I'm not familiar with the processes of the committee. If there is a request for documents, how does it proceed?

The Chair (Mr. Shafiq Qaadri): I would suggest to Ms. Thompson and to her caucus that whatever you require, submit it in writing, and then we can deal with it from there.

Ms. Lisa M. Thompson: Okay. That's fine. Very good.

This is the first time we've officially had a conversation, and I was just wondering if you could share your background in the energy sector with me.

Mr. Jim Hinds: Sure. Well, I'll go back beyond that. I was an investment banker for about 20 years. I retired in 2003. I put my name in at the Public Appointments Secretariat for Ontario public service work, and I got a call from then-Minister Duncan, who looked at my background, saw I knew something about markets and was in the process of restructuring some of the agencies in the area. There was a thing at the time called the Independent Market Operator, so he said, "You seem to know something about markets. Why don't you go over there?" It subsequently became the Independent Electricity System Operator. I was there until December 2010, first as a board member and chair of the audit committee and then, after that, as chair of the IESO.

Ms. Lisa M. Thompson: Okay. Very good. And who were the main points of contact between OPA and the Liberal government during the cancellation and the relocation of the gas plants?

Mr. Jim Hinds: Which one? I was not there at the time of the cancellation of Oakville, so I can't speak to that.

Ms. Lisa M. Thompson: Okay. For Mississauga?

Mr. Jim Hinds: Of the government? In that case, I guess the commitment, as mentioned, to cancel the Mississauga plant was made in the Liberal campaign

material during the course of an election. To the best of my recollection, the re-election happened and then there was an interregnum period where, I believe, technically Minister Duguid was continuing to be the Minister of Energy after the re-election of the government. But again, I'm sort of forgetful about how the timing worked with the appointment of incoming Minister Bentley, so during that interregnum period, it was my understanding that the communications between the government and the OPA would have been from staff in the Premier's office and staff in the Ministry of Energy to the OPA.

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Ms. Lisa M. Thompson: And do you recall who they are?

Mr. Jim Hinds: Well, I mentioned my contact with Jamison Steeve, so Jamison would have been one of them. I can't speak to personal knowledge of the others, but I suspect it would have included the then chief of staff, Craig MacLennan, and—no, I'm sorry; beyond that, I don't know.

Ms. Lisa M. Thompson: And you mentioned the Liberal Party. Who in the Liberal Party, in terms of making decisions to cancel? You just quickly—

Mr. Jim Hinds: Yes, I'll go over that. I was called at 8 o'clock on a Friday night, September 26, by Chris Morley. This is in my last testimony and also prior to that.

Ms. Lisa M. Thompson: Yes.

Mr. Jim Hinds: And so he notified me of the change or creation of policy or something during the election that the Liberals were going to announce the next day. I thanked him for the call, got off the call and tried to figure out what it meant. So that would be the contact with a Liberal Party staffer. I believe he was a campaign volunteer.

Ms. Lisa M. Thompson: You bring a vast background of experience to the table in your role as it is today. Did you feel that Chris Morley had the experience to be facilitating or making those types of decisions?

Mr. Jim Hinds: Well, I'm not going to speak to Chris Morley personally, but I'd never been through something like this before, so I had no idea what the likely range of outcomes was going to be. My first sort of step after wheeling down the highway at 8 o'clock on a Friday night was to try to pull over somewhere safe and get on the phone with my chief executive and say, "What's going on here?"

Ms. Lisa M. Thompson: I can well imagine.

Mr. Jim Hinds: So, in response to that, I think what Colin Andersen did was he collected the thoughts of the organization, started to think about the implications of this and started to think about the issues of this, if the outcome of the election were to be different things and if this were to subsequently become government policy, and how would we react. So there was quite a lot of concerned thinking at the OPA, but after that, my next contact with government political people was the call I referenced earlier with Jamison Steeve in November of that year, when I was at the airport.

Ms. Lisa M. Thompson: Okay. Thank you for that.

Now, changing gears a little bit, in your previous testimony, you spoke to the fact that there was a conscious decision made on behalf of the government to divide the costs between the taxpayer and the ratepayer, but you didn't really go on to explain why this was the case. But you revealed that that directive to differentiate and chunk down expenses between ratepayer and taxpayer came from the Ministry of Energy as well as the government. Can you explain why they decided to differentiate and chunk down a value for the taxpayer, \$40 million, and the remainder for the ratepayer?

Mr. Jim Hinds: So this is Oakville.

Ms. Lisa M. Thompson: Yes.

Mr. Jim Hinds: Okay. The two plants, actually, in terms of the disputes that we had—the ratepayer-taxpayer issue wandered between the two negotiations from time to time, so I can give you a bit of a timeline on that.

On the ratepayer-taxpayer thing, it was something our board felt very strongly about. It first arose in the timeline because of the Oakville cancellation. We did not make that cancellation; the government made that cancellation. So then we began to debate, “Okay. What’s the fair allocation of costs of having made a policy reversal, changed your mind? Who bears that? Should it be borne by the rate base or should it be borne by the taxpayer?”

So until we started to address that with the government, I don't believe that there had been any history of any kind of discussion like that at all.

Ms. Lisa M. Thompson: Do you think the government of the day was intentionally trying to mislead the general public—

The Chair (Mr. Shafiq Qaadri): Ms. Thompson, I would invite you to please adopt parliamentary language, and the word “mislead,” despite the smile, is not—

Ms. Lisa M. Thompson: I didn't even know I was smiling. Come on.

Anyway, do you feel that there was a conscious effort to distract people by just focusing on the cost of \$40 million to the taxpayer?

Mr. Jim Hinds: I can't speak to the intention. I just know that, from our point of view, there were certain categories—we wanted a general acknowledgement from the government that there were going to be two types of costs, those borne by the ratepayer and those borne by the taxpayer. Our role was to try to minimize the costs that were borne by the ratepayer, and people can judge whether we were ultimately successful or not in that.

In terms of the costs borne by the taxpayer, I had no knowledge of how they were going to handle it or what they were going to do, but to some extent the debate between taxpayer and ratepayer came down to: How were the costs caused? What were the types of costs? That debate evolved during the cancellation of the two plants.

Ms. Lisa M. Thompson: How did you feel when you heard the government consistently saying that it was only costing \$40 million to the taxpayer, knowing the back-

ground and knowing that there was an additional cost to ratepayers? How did that make you feel?

Mr. Jim Hinds: I can't control the way the government communicates.

Ms. Lisa M. Thompson: Did it make your skin crawl?

Mr. Jim Hinds: No, but I would say that this entire career change has been a learning experience.

Ms. Lisa M. Thompson: Okay. Interesting. Then I want to fast-forward to this past week. The Liberal government introduced their—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Thompson. The time is now over for the PC caucus side. To Mr. Tabuns—

Ms. Lisa M. Thompson: You didn't give me a one-minute warning.

The Chair (Mr. Shafiq Qaadri): I didn't. I was distracted by things. Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Chair. Mr. Hinds, earlier you said that you met with Jamison Steeve and, I think, Sean Mullin and Craig MacLennan, in the spring of 2011.

Mr. Jim Hinds: That's correct.

Mr. Peter Tabuns: Do you know what month you met with them?

Mr. Jim Hinds: It would have been in April, around, I believe, April 16. The reason is that we had a board meeting right after that, so that's why I recall it.

Mr. Peter Tabuns: And did you meet with them again in May or June?

Mr. Jim Hinds: Not to my recollection. The last time I was at committee, Mr. Fedeli, I believe, asked me a question about some correspondence, referencing a meeting in—I believe it was May of that year. I had no recollection of the meeting and I believe, in response to the committee, that other people who attended the meeting said that I was at a meeting with some energy staffers. I believe Mr. MacLennan was also on the invitation list; I don't have a recollection of that. But other than that, no.

Mr. Peter Tabuns: With regard to cancellations or other substantial matters, do you receive instructions from the government in a variety of forms?

Mr. Jim Hinds: That's a very good question, Mr. Tabuns. I think that we are reviewing how we receive instructions from the government. As discussed before, one of the overriding roles that the OPA has to play is to implement the government policy of the day in the electricity system. It can be done through directives, but directives are limited and kludgy. They can be done through other mechanics too—letters from a minister or ministry to us and responses to them. But it's certainly germane to discussions we're having, trying to get a memorandum of understanding with the ministry governing, among other things, questions like this.

Mr. Peter Tabuns: So there's a lack of clarity right now about how instructions are given and acted on. Is that correct?

Mr. Jim Hinds: I would suggest that from my role as board chair, I would like to see greater delineation of access points and responsibilities, that kind of thing. From a governance point of view, it would be something that we would be reviewing going forward and trying to improve. I think that the starting point for that discussion is the memorandum of understanding with the government.

Mr. Peter Tabuns: I don't have further questions, unless my colleague does. Thank you, Mr. Hinds.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson?

Mr. Gilles Bisson: No, I'm fine.

The Chair (Mr. Shafiq Qaadri): No questions at all? Thank you. The NDP cedes its time. To the government side. Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair. I just have a few questions. Mr. Hinds, with regard to the discussions in the year 2011, were you aware that all three parties had made the same commitment to cancelling, in this case, the Mississauga plant?

Mr. Jim Hinds: Yes. We were monitoring the situation very closely. Obviously, it was a concern because we had a contract with this counter-party and the plant was being built as the election was going on. So we were monitoring the political reaction. We were monitoring the community reaction. We were monitoring the action of the NGOs that had something to say and we were also trying to assess its impact on the public and what the take-up for some of these issues was. Yes, we were.

Mr. Bob Delaney: How do you go about monitoring these things?

Mr. Jim Hinds: There are staff at the OPA in our communications division who watch the media. They review statements and they watch how things unfold. They give me statistics on Web page hits and Twitter, things like that. We do that in respect to a lot of the other activities that we perform in the electricity system, and this is another one.

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Mr. Bob Delaney: So by 2011, the Oakville decision had been made. The Mississauga decision was the one that all three parties had made the same commitment on?

Mr. Jim Hinds: I'm not going to speak to what the parties said. I think there were slight differences of opinion I have become aware of through reading some of the transcripts for this committee. But the general drift of what we got was that there was nobody outside that plant with a placard saying, "Keep building."

Mr. Bob Delaney: Okay. I'll certainly agree with that.

In reading the analysis that you had tabled with regard to the different sites and their pros and cons, the OPA had said their preferred relocation site would have been Kitchener-Waterloo-Cambridge. The testimony before the committee shows that you were unable to negotiate a deal on that site.

Mr. Jim Hinds: Sorry, Mr. Delaney, just a clarification: We're talking about Oakville now?

Mr. Bob Delaney: This would have been the Kitchener-Waterloo-Cambridge, so this would have been the relocation out to Napanee, I believe.

Mr. Jim Hinds: That would be the Oakville plant. So we're switching plants.

Mr. Bob Delaney: Yes.

Mr. Jim Hinds: Then that would be a year after the time period. Sorry; I'm just trying to orient myself time-wise.

Mr. Bob Delaney: Yes, sorry; I switched gears on you.

Mr. Jim Hinds: So we're in September 2012 at the moment, with the different plant?

Mr. Bob Delaney: Yes.

Mr. Jim Hinds: Yes, okay. There was a series of different site locations potentially in that time frame.

Mr. Bob Delaney: Yes, and you've outlined in the material you've given us some of the pros and cons of the various alternatives. With regard to Kitchener-Waterloo-Cambridge, others have come before here to say that there were numerous offers and counter-offers but you were unable to come to a deal on relocation to the Kitchener-Waterloo-Cambridge area. Right?

Mr. Jim Hinds: Yes; again, let me clarify here. The material you're seeing on the site stuff is September 24, 2012. The discussion about Kitchener-Waterloo was primarily in March and April 2011. So there was about an 18-month difference.

Going back to the Kitchener-Waterloo-Cambridge area discussion, that was a counter-proposal that the OPA first made to TransCanada after the contract was breached. For a variety of reasons at the time, there were challenges relocating—we call it KWGC; it's easier for me—that facility to KWGC which would have solved all of the moving parts to the problem. What KWGC needed, in our view, at the time—I think subsequent work has gone on but it's still an option—is peaking capacity, which we might be able to get a transmission solution for, but another potential solution is putting a peaking gas plant there. TransCanada was, as near as we could determine, absolutely not interested in building a peaking gas facility. It's a different business line, apparently.

The other issue that we had in connection with KWGC was, again, in April 2011 there was no site. There was no place to put it. You'd have to start the whole process of siting from ground zero. TransCanada, I believe, wanted this question resolved before the amount of time it would have taken to go through a full siting process.

Mr. Bob Delaney: Right. So then ultimately the negotiators from all three sides concluded that Napanee was the most practical site to locate the new facility?

Mr. Jim Hinds: Yes, and again there were at least three parties to this negotiation, which were TransCanada, ourselves and the government. But when the actual relocation decisions were made, OPG was involved as well because they had some of the sites, and there may have been other people involved. But when it came to the OPA board for discussion, this was the material that was

attached to the board resolution. These are the facts that we faced at the time we made the decision to support the relocation. So you see the rank ordering of the sites, and Napanee was not at the top.

Mr. Bob Delaney: Right, though Napanee was a willing host community that actively did seek the relocated—

Mr. Jim Hinds: That was very much a factor.

Mr. Bob Delaney: Then the decision to locate the new facility at OPG's existing Lennox site was one that all three parties arrived at during the negotiations?

Mr. Jim Hinds: Four, if you include OPG.

Mr. Bob Delaney: True, okay; four if you include OPG. It involved a number of trade-offs. One of the things going for it was its close proximity to existing gas and transmission lines, and it would then have been able to share some facilities with the existing Lennox plant?

Mr. Jim Hinds: Yes, there's good transmission coming in from—again, you're getting to the edges of my competence here. Planners at the OPA would be much better positioned, particularly transmission planners like Bob Chow, to give you answers to this, but my general understanding is that it's close to a lot of wires so you don't have to build lines. It's close to gas so you don't have to build a spur line for gas.

The challenge, I believe, at the time, was that we needed the power in the west, largely, going forward. That's where the original Oakville and Mississauga plants were to be located, west of Yonge Street. This relocation facility is in the east.

Mr. Bob Delaney: Deloitte reviewed the deal and independently concluded that it was commercially reasonable?

Mr. Jim Hinds: It was a concern for us. This is a difficult file. One of the concerns we had as a board was, was there any unjust enrichment as a result of comparing the original deal versus the deal that ultimately got resolved? So the solution there was, as our management team suggested, to bring in an outside accounting firm to look at it and give us an opinion. The opinion that came through from that was that there was no material difference from the point of view of TransCanada, and we relied on that, partially, to make our decision.

Mr. Bob Delaney: Is there anything else you want to say this morning?

Mr. Jim Hinds: No, thank you. I think I've answered your questions fully and I'm comfortable with the testimony I've given.

Mr. Bob Delaney: I think you've answered our questions fully, too, and again, I want to thank you for this absolutely invaluable analysis that your staff provided. Please provide my compliments to the people who crunched the numbers in the spreadsheet.

Mr. Jim Hinds: I will indeed.

Mr. Bob Delaney: A merry Christmas to you.

Mr. Jim Hinds: And to you, Mr. Delaney.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Thank you, Mr. Hinds, for your presence and your revisiting us. You are officially dismissed.

We have a motion on the floor from the PC caucus to be moved by Ms. MacLeod.

Ms. Lisa MacLeod: I move that the Standing Committee on Justice Policy requests that the Premier's office, all ministers' offices, all government ministry offices, the Ontario Power Authority and the Ontario Energy Board produce, within four weeks of the passage of this motion, all documentation, including correspondence, in any form, electronic or otherwise, made between September 1, 2012, and December 5, 2013, that is related to the inclusion of the rate-based costs associated with the Mississauga and Oakville power plant cancellations into the government's 2013 long-term energy plan, and that the documentation be provided to the committee, unredacted and in a searchable, electronic PDF.

The Chair (Mr. Shafiq Qaadri): Comments before we vote on this motion? Mr. Delaney.

Mr. Bob Delaney: Chair, first of all, a question: This makes a reference to the province's 2013 long-term energy plan. Is this motion within the scope of the committee?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. I will ask and confirm.

Interjection.

The Chair (Mr. Shafiq Qaadri): The official verdict, Mr. Delaney, is that it is, in fact, germane.

Any further comments before we vote?

Mr. Bob Delaney: A 20-minute recess, please.

The Chair (Mr. Shafiq Qaadri): It is your right to call for that. A 20-minute recess.

The committee recessed from 0958 to 1015.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We have the motion before us.

Mr. Bob Delaney: Chair, just before we vote on the motion, may I request of the mover that where it says "four weeks" you substitute "six weeks"?

The Chair (Mr. Shafiq Qaadri): I'll take that as a friendly amendment. I heard the assent earlier. Let's vote on the motion.

Interjection.

The Chair (Mr. Shafiq Qaadri): Let's vote on the amendment.

Mr. Bob Delaney: All right. Let's vote on the amendment.

The Chair (Mr. Shafiq Qaadri): Is the amendment accepted, six weeks?

Ms. Lisa MacLeod: Six weeks, I'm for it.

The Chair (Mr. Shafiq Qaadri): Let's vote on the motion. Those—yes?

Mr. Bob Delaney: Chair, I have just one more thing to ask. Is it the intention of the mover that, for example, a request for these documents be made from such agencies as the Ontario Ministry of Children and Youth Services, the Ministry of Training, Colleges and Universities, the Ontario women's secretariat and so on and so forth?

Ms. Lisa MacLeod: If they have information pertaining to the cancelled gas plants, yes.

Mr. Bob Delaney: Then we will say that that information that is responsive to the motion, that's fine. I think we concur with that.

The Chair (Mr. Shafiq Qaadri): Thank you. Let's vote on the motion. Those in favour of the motion, as

amended? All in favour? Those opposed? The motion carries. Thank you.

Is there any further business before the committee? Committee's adjourned.

The committee adjourned at 1017.

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 10 December 2013

Mardi 10 décembre 2013

The committee met at 1502 in room 151.

MEMBERS' PRIVILEGES

MR. ANDREW MITCHELL

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, M. Andy Mitchell.

Mr. Mitchell, you'll be, I believe, affirmed by our very able Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Andrew Mitchell: I do.

The Chair (Mr. Shafiq Qaadri): Mr. Mitchell, you have five minutes for your opening address, beginning now.

Mr. Andrew Mitchell: Thank you, Mr. Chair, Madam Clerk and esteemed members of the committee. Can everyone hear me, first off? I appreciate the invitation to appear here today and I hope that my testimony will be of some assistance to the committee as you put your recommendations together.

I understand that the broad mandate of this committee is to consider and report its observations and recommendations concerning the planning, tendering, commissioning, cancellation and ultimate relocation of the Oakville and Greenfield South gas plants. For the purposes of this committee, I think it's important that I spend some time outlining my relevant employment experience at Queen's Park between July 2010 and February 2013.

In July 2010, I left the senior policy position with the Honourable Jim Bradley in his capacity as Minister of Municipal Affairs and Housing and I accepted the position of senior policy adviser responsible for renewable energy with then-Minister of Energy Brad Duguid. I held this position until July 2011. During this period, I acted as the minister's policy adviser on renewable energy, focused specifically on the government's off-coal strategy, the feed-in tariff program and the green energy investment agreement.

As the senior policy adviser responsible for renewable energy, I had no involvement with TransCanada prior to

or post-cancellation of the Oakville generating station and I had no involvement in the decision to cancel Oakville. During this period, I was also not involved in any meetings or discussions related to the Greenfield South power facility.

For a brief period between July 2011 and the end of the provincial election in October 2011, I was the acting chief of staff to then-Minister Brad Duguid. During this period, our chief of staff had taken a leave of absence to work on the election campaign, and I was asked to remain in the office to ensure that the day-to-day operations of the ministry were being attended to. This practice was and, I imagine, remains a standard staffing arrangement at Queen's Park during a campaign period. For this four-month period, I would largely describe my work as being operational in nature, as the ministry was focused on internal administration and preparation for a new government. As a result, I was not involved in the campaign in any substantive manner.

During this period, I received two separate phone calls from the Ontario Liberal government team that ultimately led to an announcement not to proceed with the Greenfield South generating station. These phone calls were strictly informational in nature. I had no involvement in the decision to cancel Mississauga, and I provided informational briefings to the minister as I was informed of decisions.

Also during this period, Minister Duguid, along with three other ministers of cabinet, signed off on a process to move discussions with TransCanada into arbitration. This process included the Premier's office and was supported by Cabinet Office. I was also not involved in any substantive matter in this process.

Following the election in 2011 until March 2013, I acted as director of policy to Minister Bentley, but retained carriage of the renewable energy files in the office, and the vast majority of my time remained devoted to these files. Given previous experience with TransCanada and direction from the secretary of cabinet to screen certain political staff off of this file, there was limited involvement from the minister's office staff regarding negotiations between the ministry, the Ontario Power Authority and project proponents for both facilities.

I was not involved in the minister's preparation for the estimates committee on the gas plants issue, nor was I involved in document production.

In April 2013, I accepted the position of manager of government relations for TransCanada, where I work as a shared service between TransCanada PipeLines and TransCanada Energy. I had no interaction with TransCanada in any of my government roles. Before accepting employment with TransCanada, I went through a robust process with the Office of the Integrity Commissioner to clarify my obligations post-government employment. I have tabled the letter spelling out my obligations with the committee today, and I can say that I have worked within the four walls of that letter since commencement of my employment with TransCanada began.

Consistent with most political staff who transition from the public to the private sectors, I have a number of restrictions placed upon me that guide my interaction with government. Furthermore, my current employer has removed me from any internal work or discussions related to the settlement between TransCanada and the provincial government for a period of 12 months. I've also filed this documentation with the Clerk.

With that, I thank you for the opportunity and would be pleased to take any questions you may have.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Mitchell.

To the PC side, to start: Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Mr. Mitchell, for joining us today. I understand what you're saying here today and what you've given us in your opening statement. I haven't had a chance to look at the reports of the Integrity Commissioner or otherwise.

You claim to have no involvement in the discussions about Oakville, Mississauga or gas plant cancellations, although we will talk a little later about your involvement in requesting a signature of the then minister on a document that pertains very specifically to information being asked for with regard to this issue. You went from the Ministry of Energy—you were a senior policy adviser and then a director of policy. Is that not correct?

Mr. Andrew Mitchell: That's correct—two different ministers, yes.

Mr. John Yakabuski: That's a pretty senior position, is it not?

Mr. Andrew Mitchell: In a minister's office, yes—

Mr. John Yakabuski: And you want us to believe and you want the people to believe that you have no knowledge about what's going on in the minister's office or the Premier's office or the Liberal Party with regard to the decisions to cancel major power production plants and possibly relocate them, and all of the machinations that have gone on as a result of that—email dumps and email destruction, document destruction, all of that? You were a senior policy adviser and a director of policy, who then finds yourself employed by the very company that benefitted substantially, to the tune of about \$225 million, according to the auditor; the net benefits to TransCanada are about \$225 million, based on the decisions that were made and how the agreements were in favour of TransCanada. You want us at the committee to just

holus-bolus accept your story that you had no involvement in this whatsoever?

Mr. Andrew Mitchell: I'm happy to talk about both of my roles, both as senior policy adviser—and as I've described in my opening statement, that job pertained—obviously, there's a number of senior policy advisers in the minister's office.

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Mr. John Yakabuski: There aren't that many directors of policy, are there?

Mr. Andrew Mitchell: There's one.

Mr. John Yakabuski: There's one. That would be you.

Mr. Andrew Mitchell: With respect to my senior policy position, I was senior policy adviser on renewable energy. I had no involvement in any of the gas files in any manner whatsoever, in any capacity, as senior policy adviser to the minister on renewable energy.

Mr. John Yakabuski: When you had the conversation with Chris Morley with respect to getting—Chris Morley says, "Mitchell"—he called you by your last name—"you'll have to arrange to get his signature on it ASAP." This is August 5, 2011.

You sent back to him, "Yes, we will auto-pen. I'm going to read the letter to him now over the phone. Still waiting for supplementary letter," from Andrew Mitchell.

That was August 5, 2011. Were you senior policy adviser then or were you director of policy?

Mr. Andrew Mitchell: I don't know. Is there a copy of the document that I can see? I haven't seen it yet.

Mr. John Yakabuski: Oh, yes. Has the witness been given a copy of the documents? You can have these; I've got others.

Mr. Andrew Mitchell: Thanks. Can I just have a minute to review this?

Mr. John Yakabuski: Go right ahead.

Mr. Andrew Mitchell: So—

Mr. John Yakabuski: You were a senior policy adviser at that time?

Mr. Andrew Mitchell: No. Actually, at this time I would have been the acting chief of staff, so as I described in my opening—

Mr. John Yakabuski: Acting chief of staff? You didn't say anything about an acting chief of staff.

Mr. Andrew Mitchell: In my opening statement I maintained that I was the acting chief of staff to the Minister of Energy from July 2011 until October 2011.

Mr. John Yakabuski: Okay, so that's not on our background here from the legislative library.

Mr. Andrew Mitchell: Just quickly to sort of explain how that occurred, our chief of staff, Craig MacLennan, took a leave of absence at the time to work on the provincial election campaign.

Mr. John Yakabuski: Right. Craig MacLennan was definitely involved in the gas plants.

Mr. Andrew Mitchell: Craig has been here and testified to that account.

Mr. John Yakabuski: Are you telling us that as the acting chief of staff, you had no involvement?

Mr. Andrew Mitchell: I was the policy adviser on renewable energy. I accepted the opportunity as acting chief of staff. I've described that role—

Mr. John Yakabuski: That's a little broader responsibility.

Mr. Andrew Mitchell: Sure. I've described that role as operational in nature. Mind you, this is during a campaign. Typically during a campaign period, there's not a lot of policy development going on, by and large.

Mr. John Yakabuski: No, just cancellation of—

Mr. Andrew Mitchell: Well, this was a bit different. What I presume my emails are in regard to here are the minister making the ultimate decision to move the process for TransCanada into arbitration. I think you're familiar with this process. You've had a number of committee witnesses here before.

Again, I recall being in one meeting. Again, I was a senior policy adviser having no experience with this file whatsoever. Mr. Morley wanted to talk to my minister about an item. Ultimately, I think this is what this email is referring to, to get the minister's signature and comfort moving this process into arbitration. I would have arranged—I remember a meeting; it was 10 minutes in length. I didn't say anything. There was a decision to move that process into arbitration.

Mr. John Yakabuski: Your name comes up in the testimony of other witnesses here to the committee on a number of occasions. They obviously must have felt you had some involvement in the TransCanada issue and the power plant issue.

But I want to get to the broader picture here and I want the Chair to listen carefully. I hope I'm within the bounds. But I think you have to accept that there would be a certain scepticism in the minds of the public when someone elevates themselves through the Ministry of Energy—senior policy adviser, acting chief of staff, director of policy—and then goes on to secure employment with the very company that benefited dramatically, substantially, by the decisions that were made at the ministry of which you were a growing presence, of which you were an up-and-coming star. You were going up the ladder in a hurry.

Mr. Andrew Mitchell: Well, I was there for a number of years.

Mr. John Yakabuski: And the company benefits dramatically and, all of a sudden, you're now working for that company. Do you not think that someone might ask the questions: "I wonder, was there some kind of an agreement in place here? Was this a quid pro quo? Is this a trade-off? For we know that some stuff has hit the fan over at the Ministry of Energy now. There are some people who want to get the heck out while the getting's good, and we're going to give a few of them a soft landing because they've been good to us?" Is that not—

Mr. Andrew Mitchell: I understand the optics piece of that, and I can't control, optically, what people perceive. All I can control is the process by which I took ultimate employment with TransCanada. As I've described to you, I went through a very robust and lengthy

process with the Integrity Commissioner, and I think the very fact that at the end of the day she gave me a green light to proceed with TransCanada speaks volumes with respect to my involvement on the gas plant file while I was in the ministry. She felt comfortable with—

Mr. John Yakabuski: Has her report been tabled with the committee?

Mr. Andrew Mitchell: Has whose report been tabled with the committee?

Mr. John Yakabuski: The Integrity Commissioner's.

Mr. Andrew Mitchell: I filed today my post-employment letter from the Integrity Commissioner that lays out my post-employment restrictions and ultimately says—she would never say, "Proceed," but she says, "Here are your restrictions if you choose to take employment with TransCanada."

Mr. John Yakabuski: Oh, so she didn't give you the green light then. She just said, "These are your restrictions."

Mr. Andrew Mitchell: I don't think the Integrity Commissioner ever gives anyone the green light.

Mr. John Yakabuski: Well, you just said she gave you the green light.

Mr. Andrew Mitchell: She gave me a letter that would dictate my terms, and I followed the letter of restrictions—

Mr. John Yakabuski: That would dictate what your restrictions were, so she didn't give you a green light.

Mr. Andrew Mitchell: No, she never does.

Mr. John Yakabuski: She actually told you what the amber lights were.

Mr. Andrew Mitchell: She said to me, to repeat this, that she can't control optics and I can't control optics, but she felt confident enough that if I proceeded, these were my restrictions with respect to post-employment and dealing with the government going forward. I've lived within the letter of those restrictions since day one with TransCanada.

Mr. John Yakabuski: What are you doing with TransCanada now?

Mr. Andrew Mitchell: Government relations with TransCanada.

Mr. John Yakabuski: Government relations?

Mr. Andrew Mitchell: That's correct.

Mr. John Yakabuski: So do you have contact with people in the Ministry of Energy?

Mr. Andrew Mitchell: No, I don't.

Mr. John Yakabuski: You have no contact with the people in the Ministry of Energy?

Mr. Andrew Mitchell: No. As a consequence of the restrictions that are imposed upon me, I have not—

Mr. John Yakabuski: That's one of the restrictions.

Mr. Andrew Mitchell: Yes. I have not had contact with folks from the Ministry of Energy.

Mr. John Yakabuski: So it kind of ties it up nice and tidily, and everybody looks fairly well cleaned-up and protected, right?

Mr. Andrew Mitchell: Well, I think that's what restrictions ultimately should do, and that's what they've done.

Mr. John Yakabuski: Okay. I have some other questions. Do you?

Ms. Lisa MacLeod: I actually do. Do you have some more?

Mr. John Yakabuski: No, I'm good. My colleague Ms. MacLeod will—

Ms. Lisa MacLeod: Thanks very much. I do appreciate you coming in today. I did review your post-employment letter and I have reviewed some of the documentation with respect to the Integrity Commissioner. Of course, as my colleague points out, there's sort of an amber alert there. I wouldn't say "press go" or "green light" in terms of all of this.

I just want to draw your attention to a note that you sent to Kim Fryer-Ellis, who works at the Integrity Commissioner's office, on April 11 of this past year, which is very close to when, I think, originally, the Integrity Commissioner had said you would have a lobby ban for a year that would conclude on March 15, 2013. This would have been right after that. You contact them and say: "Consistent with my obligations as outlined in my post-employment letter (March 15th), I am seeking approval to connect with the Premier's office." That was with respect to the pipeline.

I'm wondering, at that point in time did you proceed to speak with the Premier's office regarding the pipeline? When you were in discussions about the pipeline, how did you keep that ethical cone or that cone of silence from the time that you spent in the government as well as the time that you're now spending at TransCanada, and how does that play with the gas plant and not just the pipeline that you were discussing? Did you ever follow through with that meeting?

Mr. Andrew Mitchell: Yes, I have. I've met with the Premier's office. I can also say that I've met with some of your colleagues in your party and I've also met with colleagues in the NDP caucus to discuss—

Ms. Lisa MacLeod: I'm not worried about the NDP or my caucus. We're not in government. We didn't cancel the gas plants.

Mr. Andrew Mitchell: Sure. I'm just explaining to you that I've met with a number of political parties on the Energy East project. The Energy East project is a significant project for TransCanada, and I have been here to discuss that with all parties.

Ms. Lisa MacLeod: At any time when you were meeting with the Premier's office or others, did the topic of the gas plants come up?

Mr. Andrew Mitchell: No, it did not.

Ms. Lisa MacLeod: I'd like to just go back to July 2012. This goes back to the Standing Committee on Estimates. When my colleague Rob Leone was putting forward a motion in the House, he and others—like Vic Fedeli and Michael Harris—were asking for documents, which ended up creating this committee, because they were withheld. I'm just wondering, given your insider

knowledge at the time, if you can provide us with any information on why the minister at the time, Mr. Bentley, decided to withhold the documents that were requested of him from the committee.

Interruption.

Mr. Andrew Mitchell: Sorry; you're all looking at the—

Ms. Lisa MacLeod: We have a screen here. What—

Mr. John Yakabuski: We're going to have a vote in four minutes and 30 seconds.

The Chair (Mr. Shafiq Qaadri): All right. The time is stopped here. We are in suspended animation. We'll resume after the vote completes. We hope you'll vote the right way. Thank you.

The committee recessed from 1521 to 1545.

The Chair (Mr. Shafiq Qaadri): I thank you for that vote of confidence, Mr. Yakabuski. I'd invite you to repeat that into the record when you do feel so.

Mr. Mitchell, your time begins. Ms. MacLeod.

Ms. Lisa MacLeod: Thanks very much. Again, I'd ask you: Why did the minister, Chris Bentley at the time, withhold the documents from the estimates committee?

Mr. Andrew Mitchell: Just to reiterate, as I said in my opening statement, I wasn't involved in the minister's preparation for the estimates committee. I would have been with respect to questions as they pertained to renewable energy, but nothing on gas plants.

Generally, I knew that there were some conflicting obligations. I think you've heard from a number of witnesses here how the minister was concerned, obviously, about confidential information that was in negotiations and not divulging that information at a point in time that would jeopardize those negotiations, also understanding that there were some responsibilities to ensure that that information was also provided to members of the House. I think it's just generally speaking to the two conflicting obligations that the minister had at the time.

Ms. Lisa MacLeod: Can I ask you a quick question about the minister's obligations? In your role as acting chief of staff and director of policy, you would have been involved in a daily tactics meeting in the morning, would you not?

Mr. Andrew Mitchell: No, actually. We didn't have daily meetings. We'd have a weekly meeting. It would be on a Friday.

Ms. Lisa MacLeod: Can I just get you to run through how you operate in the office? I know how a minister's office works. I worked in one; my husband is deputy chief of staff to a federal minister. I'm used to: wake up the morning, do a tactics call, know what's in the media, understand where that may fit in with all of the department heads; it would encourage scheduling debate; it would talk about any potential issues that would have to arise. Are you telling me that that didn't happen on a daily basis in the Ministry of Energy?

Mr. Andrew Mitchell: Again, while I was acting chief of staff, it was during an election, so I was the only one in the office. I was accompanied by one other person, so there were no staff. Everyone else—

Ms. Lisa MacLeod: Did you work on the campaign?

Mr. Andrew Mitchell: No, I did not work on the campaign, as I indicated in my statement.

During my role as director of policy as well, we didn't have daily meetings. I think communications staff would have met in the mornings as a normal sort of course or routine, but I wouldn't have been involved in those meetings.

Ms. Lisa MacLeod: How many people would have worked in the Minister of Energy's office, then and now?

Mr. Andrew Mitchell: I don't know how many now.

Ms. Lisa MacLeod: How many staff did you have when you were there as director of policy?

Mr. Andrew Mitchell: Typically, there were probably three or four policy folks.

Ms. Lisa MacLeod: So three or four policy folks, but then there's—

Mr. Andrew Mitchell: There's a director of policy, typically; there's a chief of staff; there are three or four communications staff; there's administration staff—

Ms. Lisa MacLeod: So you're telling me, Mr. Mitchell, that you were the only person left in the Ministry of Energy, in the minister's office, during an election?

Mr. Andrew Mitchell: I was the only political staff left during the election, yes. Again, as I described in my opening statement—

Ms. Lisa MacLeod: How many political staff would normally be in a minister's office, nine to 10?

Mr. Andrew Mitchell: Approximately, yes—roughly a dozen.

Ms. Lisa MacLeod: So eight or nine people were off working on the campaign on the taxpayer's dime?

Mr. Andrew Mitchell: They all took leaves of absence. That's the general practice for ministers' office staff. I stayed in the office and, as I described in my opening statement, my work was sort of operational in nature. You try to keep the ministry doing day-to-day operational stuff. Typically, there's not a lot of policy being generated because there's a campaign.

Ms. Lisa MacLeod: Except in this case, there was.

Mr. Andrew Mitchell: There was one instance, and I've described to you my role in that process.

Ms. Lisa MacLeod: So the Ministry of Energy wasn't involved whatsoever during the election, is what you're telling me, in terms of this decision by the Premier's office to cancel the gas plant?

Mr. Andrew Mitchell: Not to my understanding. Again, I've described my role in that process. I received two phone calls from the Liberal campaign team and I've outlined that process.

Ms. Lisa MacLeod: And who did you speak to with the Liberal campaign team?

Mr. Andrew Mitchell: I recall that it was Sean Mullin who I had two conversations with.

Ms. Lisa MacLeod: Sean Moulton?

Mr. Andrew Mitchell: Sean Mullin.

Ms. Lisa MacLeod: Sean Mullin. And that was the person who spoke to you on both occasions?

Mr. Andrew Mitchell: To my recollection, yes.

Ms. Lisa MacLeod: At any time when you were talking, did you not speak to the minister at the time?

Mr. Andrew Mitchell: As I described in my opening statement, I received two phone calls during the campaign period when I was in the minister's office. Everyone else was working on the campaign. I received one phone call early in the campaign. To my recollection, that was Sean Mullin. He described to me a potential announcement about the cancellation of the Mississauga gas plant. As I've said to you before, I was the senior policy adviser on renewable energy, so this would have been new information for me. I wouldn't have known much about it. It would have been a factual, very informational meeting. I would have then—

Ms. Lisa MacLeod: I'm just having a rough time with this, because I know—I've worked on several campaigns, some national. I've run in three provincial campaigns, and I just find it very difficult to believe that there would not have been a briefing note sent to the campaign from the department in charge.

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I'll give you an example, because, again, my husband does do this job federally. I know that, during a campaign, when issues come up for his minister, as deputy policy director and chief of staff, they provide information to the central campaign. I just find it really difficult to believe that, in the province of Ontario, our largest province, we'd be so woefully and inadequately served with public policy advice going to the central campaign, or that the central campaign would completely override a minister's office.

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Lisa MacLeod: It's also astonishing to me that there were no staff left in the office, with the exception of one person. I think that's quite challenging. Again, I ask you: I want you to explain to us what the minister would have made the decision on. Why would he refuse to provide us with documentation? And then I haven't even gotten into the deletion of emails, so I just find the whole scenario that you're painting here very far-fetched.

Mr. Andrew Mitchell: Okay. Is there a question? Sorry.

Ms. Lisa MacLeod: Yes. The question is, why withhold the documentation?

Mr. Andrew Mitchell: Again, I've described to you my role in estimates committee, and—

Ms. Lisa MacLeod: I don't really think you have—

Mr. Andrew Mitchell: —I think there has been lots of testimony before this committee—

Ms. Lisa MacLeod: —and the other thing is, I don't really understand why you haven't—

Mr. Andrew Mitchell: —with respect to the minister's ultimate decision as to why documents were withheld for a period of time.

Ms. Lisa MacLeod: We're getting nowhere here.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. To Mr. Natyshak of the NDP.

Mr. Taras Natyshak: Thank you very much, Chair. Mr. Mitchell, thank you for being here.

Mr. Andrew Mitchell: No problem.

Mr. Taras Natyshak: I've got seven questions for you.

Mr. Andrew Mitchell: Okay.

Mr. Taras Natyshak: Number one is the decision to move TransCanada into an arbitrated settlement: Did you provide any counsel on that issue whatsoever?

Mr. Andrew Mitchell: I did not. As I described, I accepted the role of acting chief of staff in July. I think the decision to move the discussions, I guess you would call them, with TransCanada into an arbitrated process happened in July, so for me I would have had no basis or background in the file.

It was a 10-minute meeting. There may have been a number of meetings leading up to this meeting—I'm not sure, and I don't want to speak out of turn—but I was involved in a 10-minute meeting with the minister and Chris Morley. I said nothing in the meeting.

Ultimately, I think, in that meeting, there was a decision to move that into arbitration. Then, subsequent to that, it was a walk-around item, so there was quorum with three other cabinet ministers. Then, my understanding is—again, not involved in any of this process—that it would have been returned back to cabinet at a later date.

Mr. Taras Natyshak: So that's essentially when you became aware of the fact that the file was going to head into a negotiated settlement?

Mr. Andrew Mitchell: That's my first—yes.

Mr. Taras Natyshak: Were there any terms discussed? Did you remember any types of guesstimates as to where this would lead the government in terms of costs?

Mr. Andrew Mitchell: There was, again, to my recollection, no discussion of costs in this meeting. Again, to be honest, this would have been a language that was a bit foreign to me in terms of how I had no background in any of the gas generation issues in the province. I was dealing exclusively with the feed-in tariff program and the Green Energy Investment Agreement, and I continued to do that, by and large, as director of policy.

Mr. Taras Natyshak: You are currently the manager of government relations with TransCanada.

Mr. Andrew Mitchell: That's correct.

Mr. Taras Natyshak: When were you hired there?

Mr. Andrew Mitchell: I think my first interaction with TransCanada would have been sometime in December of this year, and I would have had—

Mr. Taras Natyshak: Sorry, December of this year?

Mr. Andrew Mitchell: December, so they would have contacted me to inquire about an opportunity in an interview.

Mr. Taras Natyshak: So how long have you been hired with TransCanada for?

Mr. Andrew Mitchell: I've been there since April 2013.

Mr. Taras Natyshak: We are in December of this year.

Mr. Andrew Mitchell: Sorry, last December. I apologize.

Mr. Taras Natyshak: Okay. Sorry.

Mr. Peter Tabuns: I wondered.

Mr. Taras Natyshak: Of 2012?

Mr. Andrew Mitchell: Yes, 2012.

Mr. Taras Natyshak: And you would have been hired officially—

Mr. Andrew Mitchell: A couple of months later. I went through a rigorous interview process with them, and then I think my first day was sometime in April 2013.

Mr. Taras Natyshak: Was it a position that was vacated? Was it a position with TransCanada that was a vacant position? Had it been posted on an employment site anywhere?

Mr. Andrew Mitchell: I'm not sure if—

Mr. Taras Natyshak: Did you apply for it, or did they sort of headhunt you?

Mr. Andrew Mitchell: I was contacted about it. I'm not sure if the actual position was posted. I didn't apply through an application process, but I was contacted and I went in for an interview.

Mr. Taras Natyshak: How many GR people do they have at TransCanada?

Mr. Andrew Mitchell: We've got a director who does all of our national stuff, and his name is Chris Breen—he's attended and provided testimony here before—and myself in Ontario. We've got folks in British Columbia. Some are in the Prairies, and in Quebec and New Brunswick as well.

Mr. Taras Natyshak: Within your experience and dealings with the Green Energy Act and that file, have you ever been involved in a negotiated settlement or an arbitrated closure agreement within any aspects of the Green Energy Act, any power purchase agreements that have gone awry that you've had to cancel—

Mr. Andrew Mitchell: No.

Mr. Taras Natyshak: Nothing like that?

Mr. Andrew Mitchell: I mean, I'm certainly not a contractual expert; I'm not a lawyer. I understood the provisions under a general PPA for—

Mr. Taras Natyshak: But to your knowledge, you've never actively been involved in a negotiated settlement?

Mr. Andrew Mitchell: No.

Mr. Taras Natyshak: I'll pass it over to my colleague Mr. Tabuns.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. Peter Tabuns: From July 2011 to October 2011, you were acting chief of staff?

Mr. Andrew Mitchell: Yes, I was the acting chief of staff during that period.

Mr. Peter Tabuns: That was Minister Duguid?

Mr. Andrew Mitchell: That was Minister Duguid at the time.

Mr. Peter Tabuns: When you came on in July 2011, were you briefed about Eastern Power developers in Mississauga?

Mr. Andrew Mitchell: I was not.

Mr. Peter Tabuns: Did you get briefed as you went into the term?

Mr. Andrew Mitchell: No, I was not briefed on any files.

Mr. Peter Tabuns: As acting chief of staff, can you tell me what your primary duties were?

Mr. Andrew Mitchell: Very operational in nature. This was during a campaign. Again, it's really an opportunity to ensure that the agencies, like the Ontario Power Authority, IESO and OPG, are operating under a bit of a blackout period—so there shouldn't be any announcements during that time because of the campaign. Typically, you'd have a phone call with those agencies in the morning and in terms of—I've described my involvement in the campaign as not being particularly substantive. I would have provided some advice, perhaps, about an event or something that was involved in the campaign, but that would have been pretty limited.

Mr. Peter Tabuns: Any particular event that comes to mind that you were asked—

Mr. Andrew Mitchell: No, nothing comes to mind.

Mr. Peter Tabuns: You said you received two calls during the campaign period—

Mr. Andrew Mitchell: That's correct.

Mr. Peter Tabuns: —about Eastern Power developments?

Mr. Andrew Mitchell: At the time, I wouldn't be familiar with who the proponents were with these gas plants so it was—

Mr. Peter Tabuns: Well, then, about the Mississauga plant.

Mr. Andrew Mitchell: About the Mississauga plant, correct.

Mr. Peter Tabuns: One caller was Sean Mullin?

Mr. Andrew Mitchell: I believe both phone calls were from Sean.

Mr. Peter Tabuns: So the first was about potential closure?

Mr. Andrew Mitchell: The first, as I said, early in the campaign, was a conversation about a potential announcement about, yes, an ultimate cancellation, and I presume, at that time, relocation of the facility, but it was a very brief conversation—as I've described, sort of informational in nature.

Mr. Peter Tabuns: Why was he calling you?

Mr. Andrew Mitchell: I think he was calling to provide a potential heads-up and also to provide my minister with a heads-up. Following that phone call, I would have connected with my minister and said to him, "I just got off the phone with a member of the campaign team. There may be an announcement in the coming days around this gas facility, and I'm just providing you with that information."

Mr. Peter Tabuns: And the second call?

Mr. Andrew Mitchell: The second call would have been late in the campaign. I think this is all quite consistent, as well, with what Minister Duguid said when he was testifying here. I can't recall a specific date, unfortunately. The second call would have been Sean again, to my recollection, and he would have said, "The Premier has made a decision about cancellation of the gas facility

in Mississauga and there will be an event"—I think the event was the next day—"so I'd like to talk to your minister about orchestrating that event and getting prepared for that."

Again, I would have connected the minister. I'm not sure I was involved in the subsequent conversation between the minister and the campaign team.

Mr. Peter Tabuns: When they called to tell you that there would be an event the next day, approximately, announcing that the Liberals were not going to go forward with this plant, that they were going to cancel it, did they talk to you about any ramifications in terms of cost, legal problems etc.?

Mr. Andrew Mitchell: There was no discussion, and I wasn't asked for counsel on any of those topics.

Mr. Peter Tabuns: You called the minister in both cases?

Mr. Andrew Mitchell: I believe I did. Again, I can't recall whether or not I then connected him with campaign or if he just connected himself. But I certainly would have contacted the minister and provided him with the information that was provided to me.

Mr. Peter Tabuns: What was his response?

Mr. Andrew Mitchell: I think at the time—and I think this is, again, consistent with what the minister said at committee—he was a bit concerned about that decision, and he said that, I think, at committee. The subsequent phone call—the second one, right near the tail end of the campaign—I think he, in his conversation with the campaign team, again expressed some concerns, but ultimately the Premier was making this decision and he was prepared to support the decision of the Premier.

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Mr. Peter Tabuns: And did the minister express his concerns to you when you phoned him?

Mr. Andrew Mitchell: He didn't, no. He just said, "Let's get on the phone with the campaign and go from there."

Mr. Peter Tabuns: So you were first made aware about the Mississauga plant being an issue when you got called by Sean Mullin during the campaign.

Mr. Andrew Mitchell: That's correct.

Mr. Peter Tabuns: When in July 2007 did you start as acting chief of staff?

Mr. Andrew Mitchell: I don't have a date. I'm sorry.

Mr. Peter Tabuns: Could I ask you, was it approximately the middle of July, the end of July—

Mr. Andrew Mitchell: Again, I don't have a recollection. I just remember it being July.

Mr. Peter Tabuns: Okay, but it was before the writ was dropped?

Mr. Andrew Mitchell: Pardon me?

Mr. Peter Tabuns: It was before the writ dropped?

Mr. Andrew Mitchell: Yes, it was before the writ was dropped.

Mr. Peter Tabuns: And at the point that you became acting chief of staff, were almost all the other political staff out of the minister's office?

Mr. Andrew Mitchell: Yes.

Mr. Peter Tabuns: So by August, it was you running the ship.

Mr. Andrew Mitchell: Again, I would describe it as, for lack of better terminology, a bit of a vacant ship. I was the only political staffer there, and I was dealing exclusively with the OPS at that time, just for administrative, procedural stuff.

Mr. Peter Tabuns: Okay. Were you ever briefed on the Archives and Recordkeeping Act, and your responsibilities for keeping your emails?

Mr. Andrew Mitchell: I was not.

Mr. Peter Tabuns: Were you aware of anyone who was ever briefed on it?

Mr. Andrew Mitchell: I was not.

Mr. Peter Tabuns: What was your practice with regard to keeping your emails and records?

Mr. Andrew Mitchell: I think my general practice as an employee of the crown was consistent with—I would delete transitional emails, and other emails of substance to do my job, I would file. I generally had a practice whereby I would file electronic copies on my Outlook, and I would save those files.

When I left my employment with the government of Ontario, whatever was on my computer was on my computer. Again, by and large, those files would have related to my job as renewable energy policy adviser and then director of policy, whereby I maintained most of that role on the feed-in tariff program.

We did a substantive review of the feed-in tariff program just after the election; we completed that in March. I recall my first conversation with the minister upon accepting the job as director was him saying to me, “This is going to be your focus over the next five or six months,” and that’s exclusively what I spent my time doing.

Mr. Peter Tabuns: When you left, did you actually turn any records over to the Archives of Ontario?

Mr. Andrew Mitchell: I did not, consistent, I think, with how the previous Premier and the Information and Privacy Commissioner have testified here. They acknowledged that generally political staff were not brought up to speed on their obligations under the Archives and Recordkeeping Act. I didn’t fully understand my responsibilities therein, so at the end of my employment I did not provide any documentation to the archivist.

Mr. Peter Tabuns: When you left, you left your hard drive, you deleted what you considered transitory emails and you left what you considered substantive emails.

Mr. Andrew Mitchell: Yes. I deleted transitory emails on a daily basis. If you’ll indulge me, maybe I can just read into the record Peter Wallace’s testimony before this committee, if you’ll give me a second, because I think it speaks to his personal experience with transitory records. He said the following when he was here at committee:

“From the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that

would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant.”

Consistent, I think, with his general practice, I would follow the same practice.

Mr. Peter Tabuns: I’ll just note: I don’t have Mr. Wallace’s transcript with me, but he did also express to this committee that political staff did have a sense of what was important and what wasn’t, and that he was very disturbed about the large-scale deletion of emails.

Mr. Andrew Mitchell: Sure, and I would concur with that. I think I understood as a general practice what was important and what wasn’t. What was important for my work, I filed on my computer and saved, and whatever was in my electronic records in my Outlook—that’s how I filed, because I was not taught otherwise. Whatever was in that Outlook file was there.

Mr. Peter Tabuns: And when you left, did you say to the then-chief of staff or anyone else, “My hard drive has my records”?

Mr. Andrew Mitchell: I did not, no.

Mr. Peter Tabuns: Okay. I have no further questions.

The Chair (Mr. Shafiq Qadri): Thank you. The NDP yields its time, then? Mr. Natyshak?

All right. To the government side: Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair. Good afternoon, Mr. Mitchell. It’s been a while since we’ve seen you.

Just to fill in a few things about your work history at Queen’s Park, when did you start working here at Queen’s Park?

Mr. Andrew Mitchell: I started in 2003. I went through a number of iterations with government. I worked for a number of MPPs from eastern Ontario. I left Queen’s Park for a while, went out west, returned, and started employment with Minister Bradley. He was the Minister of Transportation at the time; then he was the Minister of Municipal Affairs.

Then, as I’ve described in my opening statement, I took an opportunity to work with Minister Duguid at energy. I was his senior policy adviser on renewable energy. I was subsequently director of policy, after the election, for Minister Bentley.

Mr. Bob Delaney: Could you just fill in a few of the blanks on, when you left after 2003, how long you were out west, and just recap when you came back?

Mr. Andrew Mitchell: Yes, sure. I should say that before I left, I actually worked for Minister Colle briefly, in citizenship and immigration. I went out west, did a master’s degree, worked for the Olympics for about a year or two, and then returned in 2007, I think, or 2008.

Mr. Bob Delaney: This is a really simple, closed-ended question: Were you involved at all in the actual decision-making process when the Oakville and Mississauga gas plants were cancelled?

Mr. Andrew Mitchell: No.

Mr. Bob Delaney: Perfect. Thank you. So, with respect to those two, you were purely focused on the renewable files, as you have previously said. Right?

Mr. Andrew Mitchell: Yes. Just to reiterate, again, my opening statement with respect to Oakville, as senior policy adviser on renewable energy I would have had no day-to-day interaction at all with the gas file or with gas generation in the province. Obviously, that's when the decision on Oakville was made, during that time. Then I've described to you my role as acting chief of staff when the decision was made to cancel Mississauga.

Mr. Bob Delaney: Okay. A few months ago, the committee passed a motion for documents from the Ministry of Energy that asked for documents from January 1, 2012, to August 2013. Were you aware of that motion?

Mr. Andrew Mitchell: I wasn't.

Mr. Bob Delaney: Okay. Would your name have been captured in some of the documents that were responsive to the search?

Mr. Andrew Mitchell: I'm not sure.

Mr. Bob Delaney: Okay. You were talking a little bit to Mr. Tabuns about some of your document retention practices. Let's just go through that.

During your time at the Ministry of Energy, would any documents that may have been related to the files on those two gas plants have been appropriately retained?

Mr. Andrew Mitchell: Sorry. Can you repeat the question?

Mr. Bob Delaney: During your time at the Ministry of Energy, would documents that even may have been related to the Mississauga and Oakville plants have been appropriately retained?

Mr. Andrew Mitchell: If I had documents to that effect, I'm sure I would have filed them, as I described to Mr. Tabuns, in my Outlook. Again, I think I've described that I was not substantively involved in the file, so I don't think I would have had any records to that effect. But if I did, presumably I would have filed them.

Mr. Bob Delaney: Okay. To talk about, I think, the genesis of why we're here, which is the Standing Committee on Estimates, which asked for documents from the Ministry of Energy, did you have any role in preparing the minister for the estimates committee at the time?

Mr. Andrew Mitchell: No. As I've described to the folks here today, I would have been involved in preparing the minister for—typically, there's sort of a Q&A session associated with estimates, so I would have been involved in preparing him on the renewable energy stuff, along with OPS staff. I would not have been involved in preparing the minister for anything that's under the purview and the mandate of this committee here today.

Mr. Bob Delaney: Right. Did you have any role with respect to production of documents for the estimates committee?

Mr. Andrew Mitchell: I did not.

Mr. Bob Delaney: Okay. When Deputy Minister Serge Imbrogno from energy appeared before the committee, he talked about a lot of the time and resources that went into searching for, identifying and compiling documents

that were responsive to the estimates committee motion. He said, "We basically shut the ministry down for that search period ... a lot of the time and effort was spent with policy legal staff going through and determining what is responsive and what is non-responsive."

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He went on to say it "took a lot of time and effort, but the ministry basically worked 24/7, and that was the priority for the ministry." Were you there at that time?

Mr. Andrew Mitchell: I was in the minister's office, yes.

Mr. Bob Delaney: Does that sound like an accurate description of what went on when preparing for the estimates motion?

Mr. Andrew Mitchell: Yes. It's a significant ordeal for any ministry when you're preparing a minister for estimates, so I know there was a lot of work that went into his preparation. But I think your question was with respect to document disclosure?

Mr. Bob Delaney: Yes. Just whether it's—

Mr. Andrew Mitchell: Again, while not being involved in the process, it looked like folks in the OPS were extremely busy trying to coordinate that with the Ontario Power Authority.

Mr. Bob Delaney: Okay. During the time some of this was going on during the 2011 election, were you paying attention to the policies and commitments of all three parties?

Mr. Andrew Mitchell: In a general way, of course. I think I followed—obviously, I was in the minister's office at the time, and I would have followed the campaign, as anyone would who was interested in politics.

Mr. Bob Delaney: When Oakville Mayor Burton appeared before the committee, one of the things he said is that he had, and I'll use his words, "won promises from all parties to stop the proposed power plant." Certainly, when Mayor McCallion was here, she said, and I'll use her words, "I think all parties would have cancelled it."

In your role, would you have been aware that all three parties had promised to either cancel or relocate the Mississauga and Oakville plants?

Mr. Andrew Mitchell: So I think, just generally watching the election and being interested, I would have understood that—again, my understanding was there was a general acceptance from all three parties that there should be cancellation of the facilities on the basis of some concerns with local communities.

Mr. Bob Delaney: Were you involved in any of the discussions that determined the sunk costs for Mississauga or Oakville?

Mr. Andrew Mitchell: I was not.

Mr. Bob Delaney: Okay. Were you aware of any discussions to limit or to minimize how the message would be communicated to the public?

Mr. Andrew Mitchell: I was not involved in any of the communications associated with those decisions.

Mr. Bob Delaney: Did anyone provide you with any information on other communications or costing?

Mr. Andrew Mitchell: No.

Mr. Bob Delaney: Let's see. Were you ever directed by any of your former chiefs of staff to either delete any emails or documents?

Mr. Andrew Mitchell: I was not.

Mr. Bob Delaney: Okay. The former Premier said that there was a lack of formal training with respect to how to properly manage records. The formal training notwithstanding, do you feel that the practices that you kept during that period conformed to the standards?

Mr. Andrew Mitchell: I still have not been trained in terms of staff requirements under the Archives and Recordkeeping Act, so I can't compare what my general practice is with those of what's required. But on the basis of substantive information, I've described my process, I think, to folks here, so I would typically try and save files that were relevant for my work. For files that were transitory in nature, I would typically delete them.

Mr. Bob Delaney: A few questions, then, about some of your experience in the energy field and some of the changes that you saw during your tenure: From your experience in working with the government and, perhaps if it's applicable, your private sector experience, do you see any major differences in Ontario's energy system today?

Mr. Andrew Mitchell: Over the course of what period?

Mr. Bob Delaney: Over, say, the last 10 years.

Mr. Andrew Mitchell: I think there have been substantial investments: building new transmission capacity in the province as well as new generation. That really started in 2003, so we've gone through a marked period of investment in energy infrastructure in the province. That's a clear signal of investment, for sure.

Mr. Bob Delaney: Do you have any thoughts on improving the process of locating energy infrastructure?

Mr. Andrew Mitchell: I generally don't, and I know there have been significant changes recently from the government of Ontario. There have been some changes in the way energy infrastructure is being sited, so I think that's a step in the right direction. I worked almost exclusively on the feed-in tariff program, and there were some concerns about how energy is being sited in the province. I think there has been some movement in the right direction there in terms of the new regime of siting for energy infrastructure.

Mr. Bob Delaney: Chair, I'm going to stop there on this round.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. We'll now move to the PC side: Ms. MacLeod? No further questions? To the NDP side: Mr. Natyshak.

Mr. Taras Natyshak: I've got just a couple of questions that come out of Mr. Delaney's—

The Chair (Mr. Shafiq Qaadri): How many questions, Mr. Natyshak? Is it the same seven?

Mr. Taras Natyshak: I think there are about three or four, Chair, if I may. How much time do I have? Ten minutes?

Mr. Bob Delaney: You've got 10.

Mr. Taras Natyshak: Thank you. Mr. Delaney asked you if you had been monitoring all parties during the 2011 election in regard to the cancellation of the Oakville gas plant and you had indicated that you were.

Mr. Andrew Mitchell: In a general sense. I wouldn't say I was monitoring the parties, so if I—

Mr. Taras Natyshak: I wrote down that you had indicated that you thought there was a general acceptance between all parties that they had all committed to—are you quite certain about that?

Mr. Andrew Mitchell: No, I'm not certain, and my understanding was, again, that there were some concerns identified from all the parties, the local MPPs, or the candidates, for that matter. But again, I may be incorrect, so you may—

Mr. Taras Natyshak: You wouldn't know specifically what party policy was or what the leaders were saying specifically about the Oakville plants?

Mr. Andrew Mitchell: At the time, no. I can't recall.

Mr. Taras Natyshak: Well, just for your information, I will let you know that our leader, Andrea Horwath, had not committed to cancelling the Oakville plant because we had no idea what the number would be. We certainly could not commit to cancelling any type of a contract without fully knowing the costs. And speaking of costs, I'm wondering, have you followed this committee for a while?

Mr. Andrew Mitchell: A little bit.

Mr. Taras Natyshak: A little bit.

Mr. Andrew Mitchell: Yes.

Mr. Taras Natyshak: Mr. Delaney, at one point, characterized the costs, which we know are quite enormous, of cancelling the Oakville and Mississauga gas plants as akin to the moon landing, ostensibly to bring a government boldly where it has never gone before. Would you concur with Mr. Delaney's assessment of what the costs were going to be?

Mr. Andrew Mitchell: As I've described to you, I've watched this committee when I've gotten the opportunity to do so. I don't think I've got much to add in terms of further discussion on the costs and the quantum of costs. You've got expert testimony here from folks from the Ontario Power Authority. You've got two reports now from two Auditors General. From that perspective, I don't think I've got much further to add to the cost conversation.

Mr. Taras Natyshak: I appreciate that, and I understand that you're limited in terms of what your knowledge would be when it comes to the specific guesstimate of what the cost would be. But I think Mr. Delaney, in one part, was correct in the fact that the costs have turned out to be astronomical. Of course, that's why we're here today. But I appreciate your testimony.

Mr. Tabuns, do you have any questions?

Mr. Peter Tabuns: I do indeed. You left in February 2013?

Mr. Andrew Mitchell: Yes. It was sort of in around that general time period.

Mr. Peter Tabuns: Our notes say February 2013, director of policy, Ministry of Energy. You didn't move on to another position?

Mr. Andrew Mitchell: No. I did not in government, no.

Mr. Peter Tabuns: Who was the chief of staff in the minister's office?

Mr. Andrew Mitchell: Chris Cheung was the chief of staff at that point in time.

Mr. Peter Tabuns: And was he relatively new?

Mr. Andrew Mitchell: New as a chief of staff?

Mr. Peter Tabuns: Yes.

Mr. Andrew Mitchell: Yes, that would have been his first job as a chief of staff in government.

Mr. Peter Tabuns: When did he start?

Mr. Andrew Mitchell: As chief of staff?

Mr. Peter Tabuns: Yes.

Mr. Andrew Mitchell: That summer, so some time—when Craig MacLennan departed, that's when Chris Cheung would have become the chief of staff. Chris Cheung was a long-standing policy adviser to Minister Bentley, so he was with him at the Ministry of the Attorney General and subsequently with him at energy as a senior policy adviser on a number of files, and then he would have assumed the position of chief of staff.

Mr. Peter Tabuns: You were working for Minister Bentley in May 2012, May of last year.

Mr. Andrew Mitchell: Yes.

Mr. Peter Tabuns: So you would have been aware that there was an intense debate going on in the estimates committee and a demand for records?

Mr. Andrew Mitchell: I was aware of the debate at estimates, yes.

Mr. Peter Tabuns: Then you were aware of the provision of documents in the fall of 2012, in September 2012?

Mr. Andrew Mitchell: The disclosure of documents to estimates?

Mr. Peter Tabuns: Yes.

Mr. Andrew Mitchell: Yes, I was aware of that process.

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Mr. Peter Tabuns: And I assume you were aware of the controversy over whether or not all of the documents had been released or not.

Mr. Andrew Mitchell: I was aware of that controversy, yes.

Mr. Peter Tabuns: And in the aftermath of that, were you or other members of the minister's staff talked to about the need to preserve records at all?

Mr. Andrew Mitchell: No, we were not. No.

Mr. Peter Tabuns: Were you ever told to delete records?

Mr. Andrew Mitchell: I was not.

Mr. Peter Tabuns: So when you left, there was no one who checked with you as to whether or not you had files to turn over to the Archives of Ontario?

Mr. Andrew Mitchell: No, and my understanding was—I think, if you read into the letter of the law, the

archivist would approach a minister's office and have that discussion, but I'm not sure. I haven't read the act. I still haven't; I'm no longer staff here.

I understand there have been some positive developments on that front. The new Premier has put some training requirements in place. I think that's a step in the right direction.

Mr. Peter Tabuns: Okay. I have no further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. To the government side: Mr. Delaney.

Mr. Bob Delaney: I believe we're done as well.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thanks to you, Mr. Mitchell, for your presence and testimony. You are respectfully dismissed.

Mr. Andrew Mitchell: Thank you.

COMMITTEE BUSINESS

The Chair (Mr. Shafiq Qaadri): We have some motions, I believe, before the committee.

Mr. Peter Tabuns: If I may move the motion?

The Chair (Mr. Shafiq Qaadri): Go ahead, Mr. Tabuns. The floor is yours.

Mr. Peter Tabuns: Thank you, Chair. I move that the Standing Committee on Justice Policy meet on the following days for the purpose of report writing pursuant to its mandate:

—Tuesday, January 21, from 9 a.m. to noon and 1 p.m. to 4 p.m.;

—Tuesday, January 28, from 9 a.m. to noon and 1 p.m. to 4 p.m.;

—Tuesday, February 4, from 9 a.m. to noon and 1 p.m. to 4 p.m.;

—Tuesday, February 11, from 9 a.m. to noon and 1 p.m. to 4 p.m.; and

That report writing shall be held in closed session; and
That one staff person from each political party be present during report writing; and

That the committee report its findings and recommendation to the House no later than Monday, February 24.

If I may speak to that motion?

The Chair (Mr. Shafiq Qaadri): You may, Mr. Tabuns. I'd just like you to confirm: You are referring to the year 2014, I presume?

Mr. Peter Tabuns: I am, indeed. Thank you, Mr. Chair, for that clarification.

Mr. John Yakabuski: It's always good to know the year.

Mr. Peter Tabuns: It's always best, yes. A 2015 or 2016 date would have very different import, I have no doubt.

As you are aware, Chair, this committee doesn't sit when the House isn't sitting unless a decision is made by the committee is actually sit. We've gone through a few intersession opportunities; I want to make sure that we do in fact sit when the Legislature is not in session. I suggest these times, and I suggest that we turn our minds to report writing. It's consistent with the direction set by the Legislature. We've heard from quite a few witnesses, and

we've received quite a few documents. I have no doubt that we will receive more documents and, frankly, in the terms of this motion, we are not prohibited from calling other witnesses. If we find it necessary as a committee, we may determine that there are points of clarification that need to be made, but I would say that, at this point, we do in fact have to get on with our work. I think it's to the advantage of all concerned to actually sift through the evidence and come forward with a report for the Legislature's consideration.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Ms. MacLeod.

Ms. Lisa MacLeod: While I appreciate the intent of my hard-working colleague Mr. Tabuns, I have two concerns with this. The first is that not one of the members on our committee side are from Toronto, and it does make it much more difficult when scheduling. The second is that both myself and Mr. Yakabuski are out of the country for some of these dates.

I also find that it's far too prescriptive. I think it's too definitive. With that mind, I would just like to put forward an amendment.

I move that the following sections be deleted:

"I move that the Standing Committee on Justice Policy meet on the following days for the purpose of report writing pursuant to its mandate:

"—Tuesday, January 21, from 9 a.m. to noon and 1 p.m. to 4 p.m.;

"—Tuesday, January 28, from 9 a.m. to noon and 1 p.m. to 4 p.m.;

"—Tuesday, February 4, from 9 a.m. to noon and 1 p.m. to 4 p.m.;

"—Tuesday, February 11, from 9 a.m. to noon and 1 p.m. to 4 p.m.;"

And:

"and that the committee report its findings and recommendations to the House no later than Monday, February 24."

And be replaced with:

"I move that the Standing Committee on Justice Policy meet on witness days allotted to the NDP, for the purpose of report writing, starting the first week when the House resumes."

And:

"and that the committee report its findings and recommendations to the House once the committee has reached unanimous consent."

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. We'll certainly entertain that amendment. I think we'll need to recess in order to process.

Mr. Peter Tabuns: Yes. In fact, I was going to ask for that, and for a written copy of the amended motion.

The Chair (Mr. Shafiq Qaadri): Yes, absolutely. Okay. So we're in recess for five, 10 minutes.

The committee recessed from 1625 to 1636.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The committee is back in session. We now have amendments to the main motion proposed by Mr. Tabuns, and the floor is open for discussion either way.

Ms. Lisa MacLeod: I just need to make an amendment to the amendment.

The Chair (Mr. Shafiq Qaadri): Yes?

Ms. Lisa MacLeod: I previously said at the very end of my amendment, "and that the committee report its findings and recommendations to the House once the committee has reached unanimous consent." I would like to amend that to say, "has reached a majority." Oh, sorry. I'm reading the wrong draft—"has reached a decision of the committee."

The Chair (Mr. Shafiq Qaadri): "Has reached a decision."

Mr. Bob Delaney: In other words, once the committee has reached a decision, period.

The Chair (Mr. Shafiq Qaadri): All right. So we have the amendment to the amendment to the motion now before us. Is there any discussion, debate or finer elements of wordsmithing required before we vote on that amendment to the amendment to the motion?

Mr. Peter Tabuns: If I can have clarity, Chair—and I think we all agree—you are taking the last line of my motion, which says that the committee will report its findings to the House on Monday, February 24, and replacing it. What you've said is, "and that the committee report its findings and recommendations to the House once the committee has reached a decision."

Ms. Lisa MacLeod: Yes.

Mr. Peter Tabuns: I am agreeable to that amendment.

The Chair (Mr. Shafiq Qaadri): Fair enough. So can we vote on this amendment to the amendment to the motion? Mr. Delaney, comments?

Mr. Bob Delaney: We have in the process of this discussed our freedom as a committee to call additional witnesses. Can I just ensure that we're clear on what the witness rotation would be, how much time and how many witnesses per day? In other words, we're used to a particular rotation here. Although we have said that during this process we can call additional witnesses, which is fine, I just want to clarify: Are we using the same protocol that we have right now?

Ms. Lisa MacLeod: Yes.

Mr. Peter Tabuns: Well, we're actually dealing with a separate amendment. We can deal with that question. The first is the amendment by the PCs to change the last line of my motion. I'd suggest we deal with one amendment at a time.

The Chair (Mr. Shafiq Qaadri): Thank you. Those in favour of this amendment, as read by Ms. MacLeod—the amendment to the amendment?

Mr. Bob Delaney: Again, just for clarity, are we voting on the part that says "I move that the Standing Committee on Justice Policy meet on witness days allotted to the NDP for the purposes of report writing"?

The Chair (Mr. Shafiq Qaadri): No. We are not voting on the date issue. We're voting only on that last line change.

Mr. Bob Delaney: In other words, there are two amendments to the motion.

The Chair (Mr. Shafiq Qaadri): Correct.

Mr. John Yakabuski: There's an amendment to the amendment to the amendment.

The Chair (Mr. Shafiq Qaadri): Correct.

Mr. Bob Delaney: Okay. So the first thing we're voting on is the replacement of "unanimous consent" with the words "a decision."

The Chair (Mr. Shafiq Qaadri): Exactly.

Mr. Bob Delaney: Fine. Now I understand what we're asked to vote on. Okay.

The Chair (Mr. Shafiq Qaadri): Thank you. Those in favour of this amendment to the amendment to the motion? That is now carried.

We now go to the amendment to the motion.

Mr. Peter Tabuns: Sorry, we've just agreed to this amendment to the motion?

Mr. Bob Delaney: The amendment to the amendment.

The Chair (Mr. Shafiq Qaadri): Yes, so the new version reads as follows. The very last line of this document is now rendered as, "has reached a decision of the committee." Correct? All right. That is now executed.

Now we have the amendment, which is the material that follows "and be replaced with."

Mr. Peter Tabuns: And that replaces the line "and that the committee report its findings and recommendation to the House no later than Monday, February 24." That's now out. So you have an additional line, which is, "I move that the Standing Committee on Justice Policy meet on witness days allotted to the NDP, for the purpose of report writing, starting the first week when the House resumes," which means that when the House resumes, the Thursday slot will continue to be a report-writing slot. Correct?

Mr. John Yakabuski: Whatever day was allotted to the NDP—

The Chair (Mr. Shafiq Qaadri): Yes.

Ms. Lisa MacLeod: You're cool with that?

Mr. Peter Tabuns: Yes. Move it forward.

The Chair (Mr. Shafiq Qaadri): Fair enough. Those in favour of this amendment? Those opposed? That amendment carries.

Shall the motion, as double-amended, carry? Yes, Mr. Tabuns.

Mr. Peter Tabuns: So all my text is then preserved down to and including "that one staff person from each political party be present during report writing; and."

The Clerk of the Committee (Ms. Tamara Poman-ski): "And that report writing shall be held in closed session." So you have that as well.

Mr. Peter Tabuns: Yes. So you have—

The Chair (Mr. Shafiq Qaadri): Regrettably, but that is the reduction, yes—not the redaction but the reduction.

Mr. Peter Tabuns: So everything is intact from "I move" down to "report writing; and," and then the two other sections are added on.

Mr. John Yakabuski: No. The dates are gone. We removed that in the amendment.

The Chair (Mr. Shafiq Qaadri): Yes, the dates are gone.

Mr. Peter Tabuns: No. The only thing that's removed in the amendment is the date for a final report.

Mr. John Yakabuski: No. We deleted the first part: "I move that the following sections be deleted," and that included—it started with the dates; they're gone.

The Chair (Mr. Shafiq Qaadri): The dates are now gone. We've already voted on that.

Mr. Peter Tabuns: Pardon?

The Chair (Mr. Shafiq Qaadri): The dates are now gone, so just to be clear—

Mr. Peter Tabuns: No, Mr. Chair. We were going up the document. We agreed that—

Interjection.

Mr. Peter Tabuns: "I move that the following sections be deleted": There was no vote on that.

Ms. Lisa MacLeod: Yes.

Mr. John Yakabuski: That was the amendment

Mr. Peter Tabuns: No. We had a vote on "That the committee report its findings and recommendations to the House once the committee has reached a decision."

Mr. John Yakabuski: That was the amendment to the amendment.

Mr. Peter Tabuns: Yes. That was amended, and that part was adopted. And then the second part, "I move that the Standing Committee on Justice Policy meet" to write reports at the time that NDP witnesses would be heard—

The Chair (Mr. Shafiq Qaadri): Just to be clear, Mr. Tabuns, I think that's obviously the intent of the underlying phrase there, "and be replaced with," meaning all of the above is now replaced with that, which is now in the record.

Mr. Peter Tabuns: No. Mr. Chair, that motion—I had agreed to wording additional to what was here, not the cancellation of all that was above.

Mr. John Yakabuski: Well, that's what the motion was.

The Chair (Mr. Shafiq Qaadri): That's what the motion was.

Mr. Peter Tabuns: While I agreed to amendments, I'm not going to agree to deletion of meeting dates to write the report.

Mr. John Yakabuski: We already voted on it, Peter. You voted to a motion that said, "I move that all these sections be deleted." It started with that.

Mr. Peter Tabuns: No, I don't move that those sections be deleted. I didn't support it.

Mr. John Yakabuski: You didn't—we moved it.

Mr. Peter Tabuns: Yes, but I didn't support that.

Mr. John Yakabuski: We already voted, did we not? Did we not vote on the amendment? Chair, have we not—

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski is correct. This issue is, at least legalistically, formally dealt with, because the votes are now over. But in the spirit of making sure that everyone is voting with the proper understanding, I am willing to, I suppose, go back and undo those votes with unanimous consent.

Mr. John Yakabuski: No.

The Chair (Mr. Shafiq Qaadri): I do not have unanimous consent, Mr. Tabuns.

Just to be clear, your motion, as it is now double-amended, stands that you are proposing that the justice policy committee meets, and the only issue is the dates above, the January 21, 28, February 4 and 11, that's gone. It is now reduced to meeting on the witness days, after the House resumes, the time allotted for the NDP, and with that additional sentence correction amendment by Ms. MacLeod. That is now the motion that is before this committee.

Mr. Peter Tabuns: Five-minute recess.

The Chair (Mr. Shafiq Qaadri): A five-minute recess.

The committee recessed from 1644 to 1653.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The committee is back in session. Just for the record, our Clerk has handed out the motion which has essentially passed so far by the committee, as amended, with all the various texts removed. It's now before the floor. Comments? Mr. Tabuns?

Mr. Peter Tabuns: I would urge the movers to withdraw this. If they don't, I'll vote against it. After that—

The Chair (Mr. Shafiq Qaadri): That would be self-reflexive, Mr. Tabuns, as you were the mover, but in any case—

Mr. Peter Tabuns: Not of a motion that takes us nowhere, Mr. Chair. One can amend a motion to death, and the knife has been put into this one. I am going to, after this motion has been disposed of one way or the other, move that this committee reconvene Thursday morning at 9 a.m. for consideration of its schedule in the new year.

The Chair (Mr. Shafiq Qaadri): Fair enough. Just to let you know, there are no witnesses scheduled, so—

Mr. John Yakabuski: First, I would move that the motion, as amended, be withdrawn, period. Let's start with that.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns actually has a motion before us. Are we agreeable to meet Thursday at 9 a.m.?

Mr. John Yakabuski: Let's withdraw the motion first.

Mr. Bob Delaney: At the moment, what's on the table is the motion, as amended.

The Chair (Mr. Shafiq Qaadri): Correct.

Mr. Peter Tabuns: If you withdraw your motion, we'll recall the motion.

Mr. John Yakabuski: It's not our motion. It's your motion.

Mr. Peter Tabuns: Well, if I have that control, I'm happy to withdraw the motion.

Ms. Lisa MacLeod: Why don't you withdraw the motion—

Mr. John Yakabuski: Move to withdraw it.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns needs unanimous consent in order to withdraw this. Do we have unanimous consent?

The Clerk of the Committee (Ms. Tamara Poman-ski): His original motion. Your original motion, right? You want a clean slate.

Mr. Peter Tabuns: My original motion got amended to this—

The Clerk of the Committee (Ms. Tamara Poman-ski): Right, but you want a clean slate.

Mr. Peter Tabuns: —so my original motion no longer exists.

The Chair (Mr. Shafiq Qaadri): Do we have unanimous consent?

Mr. Bob Delaney: What is it that we're asking for unanimous consent to do?

Mr. John Yakabuski: We want to go back to where we were before we started this discussion.

Mr. Steven Del Duca: Like, in January?

Mr. John Yakabuski: No, no. That way, we can talk on Thursday at committee about what is a reasonable schedule, so that we can actually do something that we all think will be reasonable for all of us.

The Chair (Mr. Shafiq Qaadri): So I take it we do not have unanimous consent.

Mr. Phil McNeely: No.

Ms. Lisa MacLeod: Phil didn't say yes; he said no, we don't.

Mr. Bob Delaney: Apparently, regardless of what I said, we're voting on the motion.

Laughter.

Ms. Lisa MacLeod: Just a heads-up.

The Chair (Mr. Shafiq Qaadri): All right. So are we moving to vote on this thing? All right. Actually, we don't have to vote. It's already—

The Clerk of the Committee (Ms. Tamara Poman-ski): No, we do. We have to move the motion, as amended.

The Chair (Mr. Shafiq Qaadri): Didn't we already accept that?

The Clerk of the Committee (Ms. Tamara Poman-ski): No, not the main motion. We did the amendment to the amendment, and then the amendment.

The Chair (Mr. Shafiq Qaadri): All right. Fine. Whoever the orphaned author of this was, would they care to reread it in order for us to vote on it?

Mr. Peter Tabuns: I ain't reading this.

Ms. Lisa MacLeod: All right. I move that the Standing Committee on Justice Policy meet on witness days allotted to the NDP for the purpose of report writing, starting the first week when the House resumes; and

That the committee report its findings and recommendations to the House once the committee has reached its decision.

Mr. John Yakabuski: That's not the motion. This is the motion, but we do not want to vote for this motion.

Ms. Lisa MacLeod: Okay. This is the new motion—

Mr. John Yakabuski: And it's not our motion.

Ms. Lisa MacLeod: —and it's not our motion.

The Clerk of the Committee (Ms. Tamara Poman-ski): No, no, it's at the end. This is what the amendment would look like.

Mr. John Yakabuski: We understand that, but it is not achieving what we had hoped for. As you said, it would end up being where I suspected it would end up, which is not where we want to end up.

Ms. Lisa MacLeod: Okay. Then I will move the motion, as amended: That the Standing Committee on Justice Policy meet on witness days allotted to the NDP for the purpose of report writing, starting the first week when the House resumes; and

That the report writing shall be held in closed session; and

That one staff person from each political party be present during report writing; and

That the committee report its findings and recommendations to the House once the committee has reached a decision of the committee; and

That the motion now be put to a vote.

Mr. Bob Delaney: Is that what you wanted?

Ms. Lisa MacLeod: No.

The Chair (Mr. Shafiq Qaadri): All right. If there are no comments—or if there are, I'll take them now. Otherwise, we're voting on this motion.

Mr. Peter Tabuns: Recorded vote.

Nays

MacLeod, Milligan, Natyshak, Tabuns, Yakabuski.

The Chair (Mr. Shafiq Qaadri): I guess the motion is defeated.

Mr. Peter Tabuns: Mr. Chair, I move that this committee reconvene at 9 a.m. on Thursday of this week to consider committee business, in particular regarding meeting times over the next period.

The Chair (Mr. Shafiq Qaadri): Is that agreeable to members of the committee? Agreed.

Is there any further business before this committee?

Mr. John Yakabuski: That was 9 o'clock?

The Chair (Mr. Shafiq Qaadri): Yes, 9 a.m. on Thursday.

Ms. Lisa MacLeod: Can we change our subcommittee, then, to 8 o'clock or 8:30 on Thursday, so that we can actually deal with the subcommittee?

The Chair (Mr. Shafiq Qaadri): Usually we do the subcommittee right after.

Ms. Lisa MacLeod: It's good to have a subcommittee now, but why can't we just do one subcommittee? I don't think we're in a position at the moment, given the discussion we've just had, to talk about dates.

Mr. Peter Tabuns: If I may speak, Mr. Chair, my assumption is that everyone will be talking to everyone over the next few days, and by the time we get here at 9 a.m. on Thursday—

The Chair (Mr. Shafiq Qaadri): We've usually done subcommittees when we have the 9-till-10:30 window on Thursdays. It should be enough time.

Mr. Bob Delaney: Yes, we've got more than enough time to do this.

The Chair (Mr. Shafiq Qaadri): It's no witnesses, just subcommittee.

All right, so 9 a.m. Thursday.

The Clerk of the Committee (Ms. Tamara Poman-ski): It's the full committee, though, on Thursday at 9 a.m.

Mr. Peter Tabuns: A full committee meeting.

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes.

The Chair (Mr. Shafiq Qaadri): The full committee. *Interjections.*

The Chair (Mr. Shafiq Qaadri): Is that agreeable? All right. If there's no further business before this committee, we are adjourned until Thursday at 9 a.m.

The committee adjourned at 1700.

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Vice-Chair / Vice-Président

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Ms. Teresa Armstrong (London–Fanshawe ND)

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Mr. Peter Sibenik, Table Research Clerk,
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Official Report of Debates (Hansard)

Thursday 12 December 2013

Journal des débats (Hansard)

Jeudi 12 décembre 2013

Standing Committee on Justice Policy

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 12 December 2013

Jeudi 12 décembre 2013

The committee met at 0901 in room 151.

MEMBERS' PRIVILEGES

ORGANIZATION

Mr. Shafiq Qaadri: Thank you, colleagues. Season's greetings, merry Christmas, happy new year imminently.

I call the meeting of justice policy to order. There are a number of issues before the floor from research with regard to some materials, motions, I understand, and the subcommittee meeting post.

Mr. Tabuns, your motion is now being handed out—amended, corrected, redacted etc.

Mr. Peter Tabuns: I move that the Standing Committee on Justice Policy meet on the following days for the purpose of report writing pursuant to its mandate:

Thursday, January 23, from 9 a.m. to noon and 1 p.m. to 4 p.m.; Thursday, January 30, from 9 a.m. to noon and 1 p.m. to 4 p.m.; and that report writing shall be held in closed session; and that one staff person from each political party be present during report writing.

The Chair (Mr. Shafiq Qaadri): Just to confirm, Mr. Tabuns, you continue to refer to the year 2014?

Mr. Peter Tabuns: Correct. Thank you, Mr. Chair.

I would like to have a few words, and I think my colleague would like to have a few words.

I believe it's time for us to get down to report writing. We've amassed a large amount of evidence, both oral and in electronic copy. We may well ask for more evidence in the course of the next few months, but if we are in fact going to give our opinion as a Legislature on the actions of the government, it's incumbent on us to actually get down to sifting through the evidence and presenting a coherent picture and conclusions for this Legislature for consideration. I see no reason to stop, to hold back on fulfilling the direction we were given by the Legislature.

My colleague may have a comment.

Mr. Gilles Bisson: I think Mr. Tabuns sums it up well. I would just add the following couple of quick points: First, that as we start to write the report, it doesn't preclude this committee—because I think, as we start to go through the closed sessions of looking at the evidence that we have and actually start writing the report, it may be necessary for this committee to call somebody back in

order to clarify something or to follow up on something that might have been said or some piece of evidence that we've looked at as a result of our report writing. Report writing doesn't mean to say that the committee is never going to have to call anybody back—we may very well have to—and it doesn't preclude this committee from being able to call witnesses they want.

But I concur with Mr. Tabuns. We've got a lot of evidence at this point, we have a lot of testimony at this point. I think, in my mind, there's probably a bit of a need to have a few more witnesses as a result of the work that we're going to do on the report writing, but we need to start closing in on what is the mandate of this committee when it comes to reporting back to the House on the matters on which we were given authority to do so.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson.

Just to remind committee members, one presumes that there may be dissenting opinions within the report, so the report can consist of different kinds of sections. One is the main report where everyone agrees, and then all parties can have appendix A, B, C and so on, because I notice that's happened in other reports.

Are there any further comments on this particular motion? Seeing none, those in favour of Mr. Tabuns's motion as read?

Mr. Peter Tabuns: A recorded vote.

The Chair (Mr. Shafiq Qaadri): A recorded vote.

Ayes

Bisson, Tabuns.

Nays

Delaney, MacLeod, McNeely, Wong, Yakubuski.

The Chair (Mr. Shafiq Qaadri): Regrettably, I have to inform the committee members that that motion has not passed. Are there any other—

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Delaney.

Mr. Bob Delaney: Appreciating what my colleagues are trying to do, I'd like to propose a motion as well.

The Chair (Mr. Shafiq Qaadri): Do you have it in writing, Mr. Delaney?

Mr. Bob Delaney: I do indeed. Perhaps the Clerk can—

The Chair (Mr. Shafiq Qaadri): Do I have it in writing, Mr. Delaney?

Mr. Bob Delaney: While it's being distributed, I'll read it:

I move that the Standing Committee on Justice Policy may meet for up to four days during the winter adjournment at the call of the Chair. Such days and times will be agreed upon by the subcommittee; and

That should the committee choose to begin report writing, it may devote up to two days of such meeting time during the winter adjournment to report writing; and

That any report writing will be held in closed session, with one staff person from each political party allowed to be present.

The Chair (Mr. Shafiq Qaadri): I presume all members of the committee can appreciate the nuances—or slight differences, I suppose—from the previous motion.

Ms. MacLeod.

Ms. Lisa MacLeod: I am leaning more toward this motion; I had the opportunity to talk to Mr. Delaney yesterday. My biggest concern with the previous motion was that it was so prescriptive with the timings. I do appreciate where Mr. Tabuns was going. I think this is far more preferable.

The question I do have is, does this affect our committee work once we return in February? I would ask not only the member opposite but the Clerk.

The Chair (Mr. Shafiq Qaadri): Committee work in the sense that if report writing has begun, for example, witnesses would no longer be called—that sort of thing?

Ms. Lisa MacLeod: With this particular motion, I just want to make sure that we're returning, in February, to status quo, that this would just effectively allow us to sit an extra four days, and if the committee so chooses, we could begin report writing. But it doesn't prevent us from coming back in February to do our job the way we are doing it now.

The Clerk of the Committee (Ms. Tamara Pomanski): You are correct. We're looking at this motion that literally just says what we're going to do during the winter adjournment. We still have that motion previously from before, when the House would meet. Again, you guys could also move another motion saying what you want to do when the House resumes. That will trump the other one from before. But right now, this is just dealing with the winter adjournment, so this would just be covered for the winter adjournment.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski.

Mr. John Yakabuski: I just want a further clarification. This does not require us to begin reporting writing; it only has in the motion, "should the committee choose to begin report writing." So there are two different scenarios. If the committee does not choose to begin report writing, then that part of the motion would be kind of irrelevant and redundant once we returned, in my way of thinking.

But my question is, should the committee choose to begin report writing, does that change things when we return because now we've begun the stage of report writing? I want a clarification on that part of it.

The Chair (Mr. Shafiq Qaadri): It sounds to me it's the same question that Ms. MacLeod just asked, but I think, as was said by the Clerk, this is only the winter break, we go back—

Mr. John Yakabuski: Regardless of whether we actually begin report writing or not. So we can begin report writing and then go back to the status quo.

The Clerk of the Committee (Ms. Tamara Pomanski): When the House resumes.

The Chair (Mr. Shafiq Qaadri): Yes. That's the intent and that's the understanding.

Mr. John Yakabuski: That's the clarification I wanted. Thank you.

The Clerk of the Committee (Ms. Tamara Pomanski): That's what I'm assuming the intent was; right, Mr. Delaney?

Mr. Bob Delaney: That's the intent.

Ms. Lisa MacLeod: We're happy to support this motion.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Bisson?

Mr. Gilles Bisson: I want to make an amendment. I appreciate the willingness on the part of the government and the opposition to have four days during the intersession—

Mr. John Yakabuski: Up to.

Mr. Gilles Bisson: I'm doing an amendment. You can vote against it after and you can speak to it once I've said it.

Interjections.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Bisson, you have the floor. Go ahead.

Mr. Gilles Bisson: I'm moving an amendment to the motion.

Mr. John Yakabuski: Then move it. You were speaking right now and I was correcting you, because it says—

Mr. Gilles Bisson: Well, you're not correcting me.

Mr. John Yakabuski: —our thing says up to four days, so just be clear about it.

Mr. Gilles Bisson: I want to amend this to say that I would like to strike out the second paragraph and insert instead something that says akin to: that there be two days of hearings for report writing and two days for hearings in the intersession.

0910

The Chair (Mr. Shafiq Qaadri): All right. I presume we'd like to have this in formatted text here?

Mr. Gilles Bisson: Yes, the Clerk will write it up. And it just seems to me that in that way, as she's writing up the text, it gives the committee the ability to do those two days, because we really need to start pulling together the information as far as the body of evidence that we have, both written and what we have as far as testimony. It would at least allow the committee to start pulling some of that stuff together and wouldn't preclude us from

doing the hearings, should there be other witnesses that we want to call or other members of the committee want to call before us. It allows us to at least start gathering that information.

The Chair (Mr. Shafiq Qaadri): I'm happy to entertain your motion. It sounds to me like it's actually just restating what's there already.

Mr. Gilles Bisson: No. No, because what the current motion says—should the committee choose, that there be up to four days of hearings, and if we want to report-write, that's fine. Well, we don't need the permission of the committee to do that; the committee can do that at any time. So I'm trying to be more specific in saying that we actually do meet for four days in the intersession and we do two days of report writing and two days of hearings.

The Chair (Mr. Shafiq Qaadri): On top of the four days.

Mr. Gilles Bisson: No, no, it's the four days.

Mr. Peter Tabuns: Divided equally between hearings and report writing.

The Chair (Mr. Shafiq Qaadri): But then if it's stated as you've just said, I think it says that already. In any case, I can probably graph this mathematically later, but anyway—

Mr. Gilles Bisson: No, it doesn't say that. What it says—

The Chair (Mr. Shafiq Qaadri): Okay. Fair enough. Do you want to just recap the motion so that everyone is on the same page here?

Mr. Peter Tabuns: Before you recap, I have a question.

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Peter Tabuns: At this point, unless we say that we're going to actually start report writing, will the staff proceed with report writing or not? What instruction do they need from us so that when the committee meets, it has a document to consider?

The Chair (Mr. Shafiq Qaadri): Staff?

Mr. Jeff Parker: Well, we'll need your direction—

The Clerk of the Committee (Ms. Tamara Pomanski): Full committee direction.

Mr. Jeff Parker: —full committee direction, not just subcommittee, and very specific direction for a report like this.

Mr. Peter Tabuns: So in order to tell you to get going, we would have to today move a motion saying, "This committee directs staff to start writing a report"?

Mr. Jeff Parker: Well, ideally, more specific than that. If you tell us simply to start report writing, we have no direction from you at all about what you actually want us to start writing. That's something that we'd appreciate and I'm sure you would as well, if we had that type of specificity.

Mr. Peter Tabuns: I understand that. Thank you.

The Chair (Mr. Shafiq Qaadri): Fair enough. All right, do you want to summarize the motion as now understood? This is the amendment.

The Clerk of the Committee (Ms. Tamara Pomanski): Mr. Bisson's amendment would be to strike out paragraph 2 and replace it with:

"The committee should meet to allot two days for report writing and two days for hearings."

The Chair (Mr. Shafiq Qaadri): Specified, as opposed to up to choice.

Mr. Gilles Bisson: That's right. I'm saying "will meet."

Mr. Peter Sibenik: Can I just clarify one thing? Paragraph 1 of the motion says, "may meet for up to four days", and now—

Mr. John Yakabuski: He's saying "will meet," so you've got to change paragraph 1, too.

Mr. Gilles Bisson: Just amend it. Amend that, fine.

Mr. Peter Sibenik: It's specifying in paragraph 2, the amendment, that it's going to be two and two.

Mr. John Yakabuski: That's right. I was just going to point that out—that you can't have "may" in one paragraph and "will" in another.

Mr. Gilles Bisson: Just take "may" out of the first paragraph.

The Clerk of the Committee (Ms. Tamara Pomanski): Okay, "may meet for four days"?

Mr. John Yakabuski: So you would change "may" to "will," is what you're saying?

Mr. Gilles Bisson: That's what I'm saying.

Mr. Peter Sibenik: Okay, "shall."

Mr. Peter Tabuns: "Shall."

Mr. John Yakabuski: So paragraph 1 should be "shall meet"—"shall."

Mr. Gilles Bisson: "Shall meet for four days," not for two.

Mr. John Yakabuski: Take "up to" out.

The Clerk of the Committee (Ms. Tamara Pomanski): For four days. Okay.

The Chair (Mr. Shafiq Qaadri): Understood now? The motion now before the amendment is, "... shall meet for four days," two and two, as was said, hearings and report writing. Everyone clear on that? All right. If there are no further comments, we'll proceed to the vote on the amendment to this motion.

Mr. Peter Tabuns: Recorded.

Ayes

Bisson, Tabuns.

Nays

Delaney, MacLeod, McNeely, Wong, Yakabuski.

Le Président (M. Shafiq Qaadri): Regrettablement, cher collègue, la motion is defeated.

Mr. Gilles Bisson: I'm tired of the Tories propping up the Liberals all the time. You know, I'm just getting tired of this. When are you guys going to do what needs to be done in this place?

Laughter.

The Chair (Mr. Shafiq Qaadri): In any case, the amendment is defeated. We'll now move to the main motion. Are there any comments to the main motion? Fine. Those in favour of the main motion?

Ms. Lisa MacLeod: Recorded vote.

Ayes

Delaney, MacLeod, McNeely, Wong, Yakabuski.

The Chair (Mr. Shafiq Qaadri): The motion carries. We have some research issues?

Mr. Jeff Parker: That was going to be subcommittee.

The Chair (Mr. Shafiq Qaadri): Subcommittee. Thank you. Any further business for the main committee here?

Mr. John Yakabuski: I believe not.

The Chair (Mr. Shafiq Qaadri): Thank you. We're now in subcommittee.

The committee adjourned at 0915.

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICY

Tuesday 18 February 2014

COMITÉ PERMANENT
DE LA JUSTICE

Mardi 18 février 2014

The committee met at 0831 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. I'd like to welcome you back for the 2014 season of the justice policy committee. I'd like to thank all members not only for their presence today, but also for making themselves continuously available for the attempted subcommittee meetings during the break.

ONTARIO ASSOCIATION OF ARCHITECTS

The Chair (Mr. Shafiq Qaadri): I'd invite our first witness to please come forward: Mr. William Birdsell, president of the Ontario Association of Architects, who will be sworn in by our able Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Bill Birdsell: I do.

The Chair (Mr. Shafiq Qaadri): Thank you. You have five minutes for an opening address—I'm sure you know the drill by now—followed by questions in rotation by each party. Your time begins now.

Mr. Bill Birdsell: Good morning. I'm Bill Birdsell, president of the Ontario Association of Architects.

The Ontario Association of Architects is a self-regulating, self-governing profession established under the Architects Act. The mandate of the OAA is to ensure that the profession remains responsive to the needs of society and relevant to its membership, and to undertake programs and initiatives in order to achieve the objectives of the Architects Act and support practice.

I'm here this morning as the representative of 3,500 member architects, 1,000 interns and 650 associates.

To represent, regulate, support and promote the profession of architecture in the interest of all Ontarians, and to lead design and delivery of the built form in the province of Ontario is the mission of the OAA. This support of the profession includes tools, resources and the Professional Excellence Program that ensures the continued competence of all architects.

The OAA vision is that we are building leaders of Ontario.

2014 is the 125th anniversary of the OAA's service to the people of Ontario. The OAA is proud of its working relationship that we have built with successive governments in this province.

Architects believe that each work of true design should be a complete achievement in itself.

Let's be clear: The public interest in the case of the matter we wrote about, the people of Oakville, is not necessarily the same as the client interest—in this case, the Ontario Power Authority and/or TransCanada Energy Limited. Client interests include client objectives, the bottom line, materials, construction methods and maintenance of all systems that constitute our built environment. "Public," in the term, used to refer to society as a whole.

Public interest in safety means that the courses of action taken by a professional will never compromise the public interest in safety. There is no set of circumstances which bend this rule; it is always the overriding rule of all decision-making by architects.

With passage of the Green Energy Act as a guide to Ontario's future energy use, affecting both the development of a new provincial energy strategy and requiring updates to Ontario's Integrated Power System Plan—however, by the summer of 2009, local opposition to the Oakville generating station was growing. By the summer of 2010, our members were voicing their concerns and expressing those concerns to the council of the OAA.

As Ontario architects, we believe that it is our responsibility to alert the government when, in our opinion, community safety of the built environment will be needlessly threatened. The provincial government decision-making process of 2009-10 did not provide adequate recognition of the urban context where the Oakville generating station was to be located. Council requested the president of the day, Gerrie Doyle, to write the Minister of Energy and express these concerns in September 2010.

Thank you for inviting me to speak with you this morning.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Birdsell. We'll begin with the Liberal side: Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair. Thank you very much for being here, Mr. Birdsell. As you are probably aware, the mandate of the committee is to look into the decision at around the time that you mentioned in your opening remarks that the government,

and indeed all three parties, had made that decision to relocate the natural gas plants in Oakville and Mississauga. The other thing we're here to do is to provide recommendations on how the province can improve the siting process for large-scale energy projects.

We have asked you here today in your capacity as a professional architect and as the president of the Ontario Association of Architects. In 2010, during the time period which the committee is studying, you sent a letter to then-minister Brad Duguid requesting that the government relocate the proposed natural gas plant then proposed for Oakville to another location. I have copies of that letter, and I'll ask the Clerk to please distribute it, including one to yourself so you can, just in case you—

Mr. Bill Birdsell: I have it.

Mr. Bob Delaney: Oh, okay; fine. One of the other reasons that we asked you here today is to solicit your advice as an expert on the form of buildings, to talk to us a little bit about the siting of energy infrastructure in Ontario in more general terms.

A large part of our commitment and the committee's mandate here is to improve the siting of energy infrastructure in Ontario—a lot of that relies on listening to a wide variety of advice from experts who come from a wide variety of fields—and as well to engage local communities and municipalities and to learn from all parties how we can do better as a province in the siting of energy infrastructure. So I welcome the opportunity to share some of this with you and to get some of your insights on this particular matter.

Just before I start, I wonder if you could tell me a little bit about your own background in business and your background as an architect.

Mr. Bill Birdsell: I became licensed here in the province of Ontario in 1987. I currently manage a firm, J. William Birdsell, Architect, that was begun by my late partner, William R. Jarrett, in 1958. Last year we celebrated our 55th year of service to Ontario.

I do a full range of projects across the province and beyond, including adaptive refit and construction of new institutional work as well as a private range of residential and condominium work—so, a full-range service.

Mr. Bob Delaney: As you're the president of the Ontario Association of Architects, could you tell me a little bit more about the association and what role the association plays in terms of a constructive or informative contribution to the design of structures in Ontario in general?

Mr. Bill Birdsell: Well, principally, the association is primarily a regulatory body acting on behalf of architects across the province, in its capacity as a self-regulating profession. However, the Ontario Association of Architects also acts to promote and advocate for architects, good design, and also to work with all of our industry stakeholders, the Ontario General Contractors Association, Professional Engineers Ontario, the Association of Registered Interior Designers and all the building officials. We try to lead.

Mr. Bob Delaney: Okay. Is there a formal or a legal relationship between the Ontario Association of Architects and the government of Ontario?

Mr. Bill Birdsell: It's contained within the Architects Act.

0840

Mr. Bob Delaney: About the letter that you sent to Minister Duguid in 2010 on behalf of the OAA—and we've provided the letter to the committee this morning so that we can all refer to the text—in the letter, you object to the proposed location of the Oakville natural gas plant. Could you speak in a little bit more detail about the OAA's objection to the location of that proposed plant and the rationale behind your thoughts?

Mr. Bill Birdsell: While the location of the plant seemed to make certain sense from a point of view of energy use, being on the grid and being adequately serviced by water and natural gas and being in close proximity to a major user of hydroelectricity, it failed in a primary task of being located within an area in close proximity to housing in Oakville, as well as failing the test of the official plan of the community of Oakville.

Mr. Bob Delaney: Mayor Burton, of course, talked to us about that and many of the other concerns the community had in a great deal of detail. In your letter, you mentioned that the Ontario Association of Architects was aware of the growing local concern about the plant and, in fact, your support for the relocation of the plant. Could you tell the committee in a little bit more detail the nature of the concern?

Mr. Bill Birdsell: Well, we had many architects, our members, come before us at the Ontario Association of Architects Council to express these concerns and voice opposition that they had received locally; as well, they began to review the proposed location and the logic of it, and there was a great deal of fear that the project would go ahead without due consideration of a proper location.

Mr. Bob Delaney: What type of unique insight would an architect bring to the evaluation of the siting or design of an electricity generation plant?

Mr. Bill Birdsell: Well, specifically in this case, while we're aware of facility needs of direct connection to infrastructure, of which this location was amply serviced, we're also designers of the built environment of Ontario and, as a result, we concern ourselves with context. In this case, it primarily fails context for the community, and so alternative locations, equally serviced, were certainly available.

Mr. Bob Delaney: Could you clarify your use of the term "context"?

Mr. Bill Birdsell: "Context" being the urban design fabric of the community of Oakville. This would have represented a great intrusion into that fabric, both from the possibility of noise—and I'm not speaking of the finished plant itself, but my experience with these plants is that during the commissioning phase there's quite a bit of work and noise and associated functions that go on for an extended period of time and would actually disturb lives significantly.

Mr. Bob Delaney: How did the Ontario Association of Architects become aware of the concern in Oakville over that particular project?

Mr. Bill Birdsell: We received input from a local council member who had collected interest from local architects. Then we undertook our own investigation into the presentation made by TransCanada Energy Ltd. to the community. As well, we then reviewed the objections that had been raised the year before by the community itself through its municipal council.

Mr. Bob Delaney: Okay. Did you read at all the testimony before the committee of Mayor Burton?

Mr. Bill Birdsell: No.

Mr. Bob Delaney: Were you following some of the comments at the time of Mayor Burton and Oakville town council?

Mr. Bill Birdsell: Only cursory knowledge of what was carried in the media at the time.

Mr. Bob Delaney: Okay. So now I'm going to ask you, in the context of your opinion as an expert in design, as an architect, if your recollections of the concerns within the community and the concerns by Oakville town council and Halton regional council were justified—in other words, to expand a little bit on the remarks that you made a few minutes ago.

Mr. Bill Birdsell: Yes, I feel that their concerns were justified. It was part of the flawed nature of the Green Energy Act—because it gave significant powers to implement these projects without necessarily involving municipalities to discuss the matter and blend it into their plans. As a result, the project was designed around the concept of pure functionality as an infrastructure project, without due concern to the concerns that may have been raised and developed by the local community through their development of their official plan, their zoning documents and those aspects which are generally raised by a municipality to guide the future of its community, and the likelihood in understanding that community members have as to what that future will be.

Mr. Bob Delaney: You wrote your letter at a time leading up to the 2011 provincial election. Were you following the provincial election closely?

Mr. Bill Birdsell: Yes, we were certainly aware of the provincial election and that beginning to happen. This actually coincided with our return in the fall for our first fall session of the year. That's really when council had the opportunity to discuss it. It was actually more of a coincidence of that timing.

Mr. Bob Delaney: Do you recall whether, before or during the 2011 provincial election, the various candidates for office in Oakville made any sort of a commitment or took a stand on the proposed site for the facility?

Mr. Bill Birdsell: No, I am not aware.

Mr. Bob Delaney: Okay. Your letter to Minister Duguid also mentioned that the Ontario Association of Architects considers it their responsibility to alert the province to their concerns in a case like this. I'm wondering if you could amplify that brief passage in your letter and speak about that type of consideration.

Mr. Bill Birdsell: Yes. Because we view ourselves as the professional leaders of building within Ontario, and because of the nature of our relationship that we've built with successive governments, we felt that it was reasonable, within our mandate as architects here in the province, to actually bring concerns forward as to an aspect that would impact the local urban fabric.

Mr. Bob Delaney: Has the Ontario Association of Architects written to municipal, provincial or federal governments in the past in similar or comparable circumstances?

Mr. Bill Birdsell: Yes. That year, we had also written in opposition to changes at Lansdowne Park in Ottawa. We didn't feel that that actually had met similar concerns to the urban fabric of Ottawa.

Mr. Bob Delaney: Given the association's request to then-Minister Duguid, did the association support the eventual decision to relocate the Oakville gas plant to a willing host community?

Mr. Bill Birdsell: Yes.

Mr. Bob Delaney: Okay. Part of our work here at this committee is to develop recommendations on improving the process of siting large energy infrastructure projects, like gas-fired peaking plants. We've had more than 70 witnesses come before the committee, many of whom have provided interesting and valuable feedback and advice on the siting process.

The main feedback that we've heard from members of the Mississauga and Oakville communities, and siting experts such as yourself, is that there should have been a better consultation process with local residents right from the very outset of the siting process.

Based on your experience—and as you mentioned, you've weighed in on other projects—what role can engaging with the local communities play to better support the decisions regarding building large structures like natural gas generation plants?

Mr. Bill Birdsell: Well, by engaging the community sooner, there's certainly an aspect of education which then allows the municipal leaders and municipal officials to work more effectively at gauging the impact of such a project.

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Mr. Bob Delaney: Okay. Let's explore that a little bit. What are some of your recommendations for the most effective ways to engage with the local community? For example, are public consultations enough?

Mr. Bill Birdsell: In this case, no, public consultations weren't enough because the project was already well under way, and so they were actually defending the project from the point of view of mitigating potential impact without having actually engaged the public at all.

Mr. Bob Delaney: Do you have a thought or a recommendation to improve that?

Mr. Bill Birdsell: I believe that we do have a working mandate between the province and municipal leaders to actually work on projects such as this. I would say that the impact that the province has had on the planning process and which is also administered by municipalities

certainly guides this sort of instance of the location of a major infrastructure facility, so it really would allow a municipality to take the lead and be part of the request for proposals process.

Mr. Bob Delaney: Would you believe that energy infrastructure projects such as, in this case, a natural-gas-fired, peak power electricity-generating plant are unique in the kind of local consultation and local considerations that such a project might require when a location is proposed? Would they be different from a different type of industrial facility, a commercial facility, an institutional facility like a school or a hospital, or a shopping centre? Could you talk about that a bit?

Mr. Bill Birdsell: The scale of this project as a major generating station certainly is much of a larger-scale provincial issue than most municipalities would regularly deal with. However, that doesn't relieve the concerns from the plans and policies already set in place by the municipality.

Mr. Bob Delaney: If the proposed project had been an industrial project that didn't involve power generation—let's suppose it involved metalworking or something like that—what would your thoughts have been on the use of land zoned industrial for an industrial purpose? Could you talk about that?

Mr. Bill Birdsell: That is actually why we have a process of site plan approval to review the specifics of a project and gauge them in relation to the actual site and immediate context so that in the case of, for example, a manufacturing facility that perhaps had a major generating component, say, to produce steam for its process, for instance—may still be deemed as inappropriate for a site even though it may be zoned for it.

Mr. Bob Delaney: Talk to me a little bit about the town of Oakville and similar municipalities. At the moment, while they have to plan for such municipal services as waste removal, water and sewer, telecommunications and the like, they don't have to plan for how to get electricity into a development or to generate electricity within their borders. Could you talk a little bit about what changes might be needed to give municipalities a blend of both authority and responsibility to plan for electrical power generation?

Mr. Bill Birdsell: I can certainly speak to two examples that I'm aware of, one within the city of Kingston where Queen's University, because of the scale of steam generation that it did for the university, the hospitals and the local prisons—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Bill Birdsell: —was able to develop a co-generation facility. In Guelph, we have a district energy plan which is actually speaking of how to generate energy and potentially electricity to fulfill local needs.

Mr. Bob Delaney: Thanks, Chair. I think we'll stop there.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. We'll pass it to the PC side: Ms. Thompson.

Ms. Lisa M. Thompson: Thank you for coming in today on a snowy morning. I'm interested in your experi-

ence that you bring to the table in speaking on the relocation of the gas plants. Mr. Birdsell, do you consider yourself an energy expert?

Mr. Bill Birdsell: I wouldn't consider myself an expert. I do have some experience at gauging the impact of facilities like this, however.

Ms. Lisa M. Thompson: Okay. Can you share that experience?

Mr. Bill Birdsell: I've worked with corporations in developing in the pre-2000 era, the Y2K era—of developing electrical facilities to maintain their systems off-grid. So, as a result, I've reviewed those facilities in the context of the Ministry of the Environment guidelines on noise.

Out of that experience, I began to work somewhat with First Nations and Third World countries to look at options for power generation similar to the project that we're looking at but on a much smaller scale.

Ms. Lisa M. Thompson: Can you talk about the MOE guidelines for noise? Do you recall what they are?

Mr. Bill Birdsell: Only that it gauges types of noise and appropriate limitations and appropriate mitigating factors to reduce noise from impacting immediate neighbourhoods.

Ms. Lisa M. Thompson: Can you go into any more specifics about that?

Mr. Bill Birdsell: Not without guidelines in front of me to actually speak to.

Ms. Lisa M. Thompson: Would you be able to provide those guidelines to the committee?

Mr. Bill Birdsell: Most likely I could, yes.

Ms. Lisa M. Thompson: Thank you. So can we take note of that, at the table?

The Chair (Mr. Shafiq Qaadri): Yes. Thank you, Ms. Thompson. Duly noted.

Ms. Lisa M. Thompson: Thank you very much.

Were you ever an employee of OPA or the Ministry of Energy?

Mr. Bill Birdsell: No.

Ms. Lisa M. Thompson: Okay. Prior to today, have you ever given any presentations to energy conferences on the issue of gas-fired generators?

Mr. Bill Birdsell: No.

Ms. Lisa M. Thompson: No? Were you involved at any point in the decisions leading to the cancellation of the Oakville or Mississauga gas plant, aside from the letter that you submitted?

Mr. Bill Birdsell: No.

Ms. Lisa M. Thompson: Okay. I just have to ask: Were you involved in the production of the gas plant documents, or the unparliamentary decision to cancel the gas plants and withhold the documentation associated with the cancellation?

Mr. Bill Birdsell: No.

Ms. Lisa M. Thompson: Okay. Do you have any connections, personal or professional, to any of the current or previous Ministers of Energy?

Mr. Bill Birdsell: No.

Ms. Lisa M. Thompson: No? Okay. So, aside from representing an association that felt compelled to submit a letter with concerns about the flawed nature of the Green Energy Act and your concern about noise and the disturbance around the commissioning of large projects, do you know why you're here today, offering the testimony?

Mr. Bill Birdsell: Primarily in response to our letter to Minister Duguid. In addition to sound issues and issues of context, we also felt that there may be an environmental contamination by the facility in terms of generation of any pollution.

Ms. Lisa M. Thompson: What type of response did you get from Minister Duguid to your letter?

Mr. Bill Birdsell: I don't actually recall.

Ms. Lisa M. Thompson: Do you think you maybe didn't hear from him at all?

Mr. Bill Birdsell: That's a possibility.

Ms. Lisa M. Thompson: Yes, unfortunately. In your specific letter, it says, "The current provincial government decision-making process does not provide adequate buffer zones between power plants and residential neighbourhoods." I'm curious: What's your definition of a power plant?

Mr. Bill Birdsell: A power plant would be a facility such as this that generates electricity to feed into the grid. It could also be a specific plant as an accessory to a major industrial or infrastructure facility, to generate the needs for that facility.

Ms. Lisa M. Thompson: On a megawatt basis or—

Mr. Bill Birdsell: It could be a megawatt basis, or it could actually be just a steam generation facility, steam and cooling.

Ms. Lisa M. Thompson: Just out of curiosity, when we're talking about power plants, would you consider an industrial wind farm a power plant, with 100-plus turbines?

Mr. Bob Delaney: Chair, on a point of order—

Ms. Lisa M. Thompson: He's about to answer.
0900

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, first point of order of 2014: Yes, please.

Mr. Bob Delaney: Chair, I would suggest that the question is well outside the scope of the committee's mandate.

The Chair (Mr. Shafiq Qaadri): I think, Mr. Delaney, with respect, I'll be listening—as I, of course, was already, Ms. Thompson, very intently to your remarks.

Ms. Lisa M. Thompson: Thank you.

The Chair (Mr. Shafiq Qaadri): I'll allow the question, but I think you sense where we're at on this one.

Ms. Lisa M. Thompson: I do.

The Chair (Mr. Shafiq Qaadri): Please go ahead.

Ms. Lisa M. Thompson: Thank you.

Mr. Bill Birdsell: I must confess that I actually have very little knowledge in relation to wind farms.

Ms. Lisa M. Thompson: I want to come back to the flawed nature that you referenced in the Green Energy

Act and how it took away municipal authority, ignoring official plans, zoning, and the understanding of citizens of the future potential of their communities. Do you think that statement has a broad spectrum and covers off all generation of energy?

Mr. Bill Birdsell: Well, it's certainly a broad statement. It considers most forms of power generation, I would say.

Ms. Lisa M. Thompson: All right, I think we'll leave it at that.

The Chair (Mr. Shafiq Qaadri): To the NDP side: Mr. Tabuns.

Mr. Peter Tabuns: Mr. Birdsell, thank you for coming in this morning.

Mr. Bill Birdsell: Thank you.

Mr. Peter Tabuns: I'm not sure if you were aware that we in the NDP publicly warned the government not to sign a contract with TransCanada for this plant prior to their signing a contract in Oakville. Were you aware of that?

Mr. Bill Birdsell: No, I was not.

Mr. Peter Tabuns: We warned them about this; the town council of Oakville warned them about this; you were aware of people in Oakville who had warned them about this, and yet, totally recklessly, they proceeded. I just want to say for the record, we consider all the consequences flowing out of that reckless decision to be on their heads.

I should also note, although we're talking about Oakville, that we had warned them about the risk of private power contracts in 2005, at the time that they were proceeding with the Mississauga plant.

Were you aware that power demand in Ontario had been dropping for three years before the signing of the Oakville plant?

Mr. Bill Birdsell: No, I was not.

Mr. Peter Tabuns: It was. In fact, in 2009, the Mississauga contract had to be renegotiated even though, again, power demand in Ontario had been dropping for three years. Were you aware of that?

Mr. Bill Birdsell: No, I was not.

Mr. Peter Tabuns: Not only was the Liberal government warned that private power contracts were expensive and risky; not only were they warned specifically against that plant, but even though power demand was dropping, they proceeded to sign contracts that they were eventually forced to back off on. You are aware of that now?

Mr. Bill Birdsell: Yes.

Mr. Peter Tabuns: You opposed the Oakville plant and the Liberals ignored you. You didn't get a response from Mr. Duguid.

Mr. Bill Birdsell: I'm not aware of a response, no.

Mr. Peter Tabuns: I think that if he phoned you, you would remember.

Did you know the Green Energy Act doesn't cover fossil fuel plants?

Mr. Bill Birdsell: No, I did not.

Mr. Peter Tabuns: Did you know that in this case, with the Oakville plant, there was no exemption from

zoning? In fact, the whole thing was tied up in court because of a zoning decision and an interim control bylaw put forward by the town of Oakville. Were you aware of that?

Mr. Bill Birdsell: I was not aware of those details.

Mr. Peter Tabuns: I don't have any other questions in this round. Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson? No? Thank you.

We'll move back to the government side. Mr. Delaney, you have 10 minutes.

Mr. Bob Delaney: Mr. Birdsell, there was a recent report by the Ontario Power Authority and the Independent Electricity System Operator on how to improve the siting process of energy infrastructure moving forward. Have you seen it?

Mr. Bill Birdsell: No, I have not.

Mr. Bob Delaney: While we can get you a report, for the record, on August 1, 2013, the Minister of Energy asked the Ontario Power Authority, or the OPA, and the Independent Electricity System Operator, which we call IESO, to work together to develop recommendations on how to improve large energy infrastructure projects and how they're sited and how to include local voices in the planning and siting process. I'm going to mention this because some of the contents of the report bear on the comments you made in my previous round of questions. When they released their report, which is entitled *Engaging Local Communities in Ontario's Electricity Planning Continuum: Enhancing Regional Planning and Siting*, the report included 18 recommendations reflecting the feedback from more than 1,250 Ontarians.

The report included a number of other recommendations that fall into four themes, and if you'll bear with me for just a moment, let me just outline them.

The first was "Bringing Communities to the Table," which was intended to foster ongoing relationships with First Nations and Métis, and it recognized the duty to consult.

The second was "Linking Local and Provincial Planning" to integrate electricity needs into relevant municipal plans and to incorporate relevant municipal information into regional electricity plans.

The third was "Reinforcing the Planning/Siting Continuum." This was to facilitate a seamless transition from planning to siting while considering broader criteria in the generation procurement process.

And the fourth was "Enhancing Electricity Awareness and Improving Access to Information," which was designed to increase awareness of electricity needs and how these needs can be better met, and, of course, to increase the transparency of and access to data and information.

Some of the comments that you made earlier fell very much within those four categories. Having just heard the broad overview of what the report focused on when it was released last fall, would that fall in line with the general direction that you were advocating earlier?

Mr. Bill Birdsell: Yes, it would.

Mr. Bob Delaney: Okay. Was there anything I mentioned in there in those four broad classes of recommendations, or failed to mention, that you would be able to add to the table—another category of recommendations or a specific recommendation?

Mr. Bill Birdsell: No. The four seemed quite comprehensive in our concerns addressing the issue of siting and maintenance, really of dialogue between communities and these larger bodies. I would applaud an effort like that to improve the working relationship. Of course, we would have to then look and see how these projects are implemented. Much of the work of an architect is actually choosing and advocating for our clients to move projects forward, so it's always in the implementation, those details.

Mr. Bob Delaney: Okay. The province recently announced that small and medium-sized municipalities would be eligible for funding for municipal energy plans, which do, as we were talking about earlier, align infrastructure, energy and land use planning. These plans would focus on helping to identify the best energy infrastructure options for a community.

Again, looking at it in the way that you mentioned just now, do you think this would have a tangible benefit for communities that receive this type of funding?

Mr. Bill Birdsell: Yes, it would, because it would certainly encourage local growth of infrastructure and skills by a local community.

Mr. Bob Delaney: I think we're of a somewhat similar vintage, so we can remember through most of our lives where electricity generation was done in very large central facilities, distributed over centralized grids, and how following, I guess, how we saw computing power move from that model to a much more distributed model, we've seen electricity power generation move to a similar distributed model.

Would there have been any way of predicting, back in the mid-1980s, looking at, for example, the architecture of the computing infrastructure, how that would have evolved in the early to mid-1980s?

Mr. Bill Birdsell: No, I don't think we really had a strong handle on where the future was going for generation of electricity.

Mr. Bob Delaney: Okay. So, in a similar vein, having described how this province—and I'm sure you've followed other jurisdictions as they too have looked at the increasing ability to diversify and decentralize the power generation and transmission grid. Has our experience been unique here, or, in your observation, are we doing much the same things the rest have been doing in grappling with additional sources of generation and decentralized generation?

Mr. Bill Birdsell: No, the challenges are very similar. Where grids exist, we have aging infrastructure relating to the grid, and where power generation exists, we have the same aspect of adding new facilities and taking advantage of opportunities as they present themselves.

Of course, the equipment now is much better adept at creating energy and allowing larger corporations to do peak-load shaving to reduce their overall needs.

Mr. Bob Delaney: Would it be realistic to have expected any jurisdiction in the world to have had perfect 20/20 foresight, and to have gotten the diversification and decentralization of electricity generation and transmission right the first time?

Mr. Bill Birdsell: No, it wouldn't have been expected.

Mr. Bob Delaney: Do you have any other advice that you'd like to provide to the committee as we work to improve the process behind siting large energy infrastructure?

Mr. Bill Birdsell: No.

Mr. Bob Delaney: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Ms. Thompson.

Ms. Lisa M. Thompson: I want to go back to the letter that was distributed. I had the sense that you have a copy of your original letter with you today.

Mr. Bill Birdsell: Yes.

Ms. Lisa M. Thompson: Very good. Mr. Birdsell, could you tell me the date that the letter was written?

Mr. Bill Birdsell: September 22, 2010.

Ms. Lisa M. Thompson: To your knowledge, you never received an acknowledgement or a "thank you for expressing your concern" letter from Minister Duguid.

Mr. Bill Birdsell: That is correct. I was the vice-president of practice at that time, so I wasn't dealing directly with this file.

Ms. Lisa M. Thompson: To that end, do you feel that your letter had any significance in the political decision to cancel the gas plants?

Mr. Bill Birdsell: Well, given our positive relationship with government, I like to think we had some impact, but—

Ms. Lisa M. Thompson: You're agreeing that it was a political decision, then?

Mr. Bill Birdsell: No. I don't know how the final decision was made.

Ms. Lisa M. Thompson: That's fine. Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns?

Mr. Peter Tabuns: September 22, 2010, was a year after the contract had been signed. Why had you not spoken out earlier, given the concerns about the plant?

Mr. Bill Birdsell: We waited until we had a level of involvement by local architects, who then brought the issue to us, and then we went through a process of our own investigation, and then we brought the issue to council and debated it, and then council gave instructions to the president of the day, Gerrie Doyle, to write the letter.

Mr. Peter Tabuns: Thank you. I have no further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns, and thanks to you, Mr. Birdsell, for your presence and testimony.

The committee is in recess till this afternoon. Thank you, colleagues.

The committee recessed from 0913 to 1501.

MR. ANDREW TELISZEWSKY

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the Standing Committee on Justice Policy to order. We have our first afternoon witness of the 2014 session, Andrew Teliszewsky, who will be sworn in by our Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Andrew Teliszewsky: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Teliszewsky. You have five minutes for an opening address, beginning now.

Mr. Andrew Teliszewsky: Thank you, Chair and honourable members. My name is Andrew Teliszewsky, and I am the chief of staff to Bob Chiarelli in his capacity as the Minister of Energy. I've got some brief comments to make about my role in Minister Chiarelli's office, and then I'll respond to your questions.

I've had the privilege of working for Minister Chiarelli since early 2011, beginning first at the Ministry of Infrastructure. In the fall of 2011, responsibility for the Ministry of Transportation was added to the portfolio, and my role with the minister expanded correspondingly.

In February 2013, Minister Chiarelli was shuffled to the Ministry of Energy and I subsequently joined him, again as chief of staff. Prior to joining Minister Chiarelli's office, I worked in various roles at the Liberal Caucus Service Bureau as well as the former Premier's office. In one way or another, I've been a Queen's Park staffer since about April 2006.

Upon arrival at the Ministry of Energy minister's office, it became clear that we had two sets of files to contend with: the first, moving forward with the government's positive agenda and how that related to the Ministry of Energy; and the second, issues management with regard to the legacy files this committee is charged with reviewing; namely, the relocation of natural gas plants as well as the subsequent auditors' reports. To that end, with respect to any new information that came forward, either through the deputy minister's office or the Ontario Power Authority as it related to cost estimates as well as the progress of Auditor Generals' reports, I maintained ownership of these files within our office's reporting structures. I took care to appropriately limit the engagement of other political staff, to ensure clear lines of accountability between the deputy minister, myself and Minister Chiarelli.

This delineation of responsibility allowed our team to focus as much as possible on the first set of files I mentioned: our government's positive agenda.

In about a year's time, I'm proud to have been part of the accomplishments at the Ministry of Energy. I've done my best in my role to ensure that decision-makers have access to the information they need and, to that end, have relied on the tremendous work of officials at the Ministry of Energy and the Ontario Power Authority.

Over the course of the past several months, this committee has had the benefit of testimony from individuals who participated directly in the decisions regarding the relocation of those two natural gas power plants. You've also had the benefit of two Auditor Generals' reports as well as hours of testimony from the Ministry of Energy and the OPA to explain and support those findings. This committee has also passed several motions regarding document disclosure requests.

In all instances, my role was to ensure that the staff in our office were following the directions provided by the Ministry of Energy, which were developed in collaboration with Cabinet Office, to search for and disclose all relevant records.

Meetings occurred regularly with the deputy minister and ministry legal staff to ensure that adequate resources were being devoted to document search and that the process was being undertaken in accordance with the wishes of this committee.

I would like to emphasize the incredible amount of staff time that is required to ensure that all responsive documents are captured and, once again, reiterate to the committee that we undertook this effort as quickly as possible.

Both Minister Chiarelli and Deputy Minister Imbrogno undertook to update this committee in writing as part of our efforts to comply with those motions.

Thank you for allowing to me to make this opening statement. I will do my best to answer any questions you may have related to my time at the Ministry of Energy.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Teliszewsky. To the Conservative side: Ms. MacLeod.

Ms. Lisa MacLeod: Thanks very much, Andrew, for coming. I'm sure it was probably not the way you envisaged your first day back at work here—well, you've been working, but the first day back at the Legislature coming to this committee. So I thank you for coming in.

I've got a couple of questions just to help me with the context of your position in the minister's office and what Mr. Imbrogno knows, what Minister Chiarelli knows—where everybody fits in, and I think you might be able to help me with that.

I'd like to, first, start by asking how you prepared for this committee appearance today and whether or not you spoke with your boss about things you might say and things that you might not say here. So if you'd just maybe humour us by providing some of the context and the content of those conversations and how you prepared.

Mr. Andrew Teliszewsky: I did spend some time on my own reviewing previous committee testimony. I did spend some time with staff in our office discussing the nature of questions. Minister Chiarelli is aware that I'm here today. I think he provided me with counsel in terms of how to respond. So—

Ms. Lisa MacLeod: Oh, did he? What did he say—“Don't answer any of MacLeod's questions?”

Mr. Andrew Teliszewsky: No.

Ms. Lisa MacLeod: It's a joke.

Mr. Andrew Teliszewsky: I believe he does certainly send his regards.

Ms. Lisa MacLeod: Yes, okay. Of course he does.

Mr. Andrew Teliszewsky: Kind of perfunctory how-to-respond sort of things, in terms of pacing. But in terms of content, I have not had an occasion to discuss with the minister.

Ms. Lisa MacLeod: Did you at any time prepare his remarks or Mr. Imbrogno's remarks or remarks for the Premier or anybody else who has attended here as a witness?

Mr. Andrew Teliszewsky: Over the course of—

Ms. Lisa MacLeod: Since you've been in the Ministry of Energy?

Mr. Andrew Teliszewsky: I've had occasion to work with my minister in terms of his preparation for testimony.

Ms. Lisa MacLeod: Would it be fair to say you sort of prepared and edited comments?

Mr. Andrew Teliszewsky: Minister Chiarelli takes a very proactive approach in terms of his own comments, and so I believe they would be his and his alone. We provide counsel as staff, but he's comfortable in the file.

Ms. Lisa MacLeod: Can you remind me again what you did previous to working for the Minister of Energy?

Mr. Andrew Teliszewsky: I worked for the Minister of Transportation and the Minister of Infrastructure.

Ms. Lisa MacLeod: Which was the same person.

Mr. Andrew Teliszewsky: Yes.

Ms. Lisa MacLeod: And what did you do previous to that? You seem to have long links to the Liberal Party.

Mr. Andrew Teliszewsky: As I mentioned in my opening statement, I've been a Queen's Park staffer since about April 2006.

Ms. Lisa MacLeod: Right. But you've played other roles, right, on campaigns?

Mr. Andrew Teliszewsky: Yes.

Ms. Lisa MacLeod: Yes. Can you elaborate on those?

Mr. Andrew Teliszewsky: During the fall of 2011, I took a leave of absence from my engagement at the Ministry of Infrastructure at the time to work on Minister Chiarelli's campaign in Ottawa West-Nepean.

Ms. Lisa MacLeod: In Ottawa West-Nepean? When did you find out about the cancelled gas plants? Through the campaign or through the media?

Mr. Andrew Teliszewsky: In Ottawa, as you'd recall during the 2011 campaign—

Ms. Lisa MacLeod: I was there.

Mr. Andrew Teliszewsky: —it really wasn't an issue that we were coping with in terms of the local Ottawa campaign. So it would have been through any provincial media coverage—

Ms. Lisa MacLeod: I can assure you, this time you will deal with it in the Ottawa campaign, the gas plants. I'm teasing you. Actually no, I'm not. Strike that from the record. I'm going to have to raise it.

As chief of staff, at some point you had been briefed on the gas plant issue. So you found out during the 2011 campaign through your sources, through the media, through your boss as a cabinet minister. The neighbouring riding is the Premier. Next door to you is the

really wonderful MPP for Nepean–Carleton. We're all talking about this issue. You then, after that election, move into the transportation/infrastructure office, and then about a year later you end up in the Ministry of Energy. At any time when you were at infrastructure and transportation were you briefed on the cancelled gas plants?

Mr. Andrew Teliszewsky: No.

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Ms. Lisa MacLeod: You weren't. When were you first briefed by officials in your department about the cancelled gas plants?

Mr. Andrew Teliszewsky: I would have received briefings with regard to that file at transition, when the new government was invested in February 2013.

Ms. Lisa MacLeod: And who briefed you?

Mr. Andrew Teliszewsky: Officials at the Ministry of Energy.

Ms. Lisa MacLeod: Which officials? Can you provide their names?

Mr. Andrew Teliszewsky: Those meetings would have been organized by the deputy minister's office. The deputy would have attended most if not all of the transition briefings at the time. We followed the protocols of the normal government transition. We worked with the new deputy minister's office to arrange those briefings, and officials were present accordingly.

Ms. Lisa MacLeod: Was anyone from the Premier's office in that briefing?

Mr. Andrew Teliszewsky: Not that I recall, no.

Ms. Lisa MacLeod: Were you ever in a briefing with the Premier's office with respect to cancelled gas plants, either in Mississauga or Oakville?

Mr. Andrew Teliszewsky: I've had occasion to be in meetings with Premier's office staff—

Ms. Lisa MacLeod: And which staff?

Mr. Andrew Teliszewsky: I would have had discussions or meetings with various Premier's office policy staff. We were all coming in to new roles after the installation of the new government. Being the chief of staff at the Ministry of Energy, we would receive the information, and to the extent that it was necessary to synthesize that information for—

Ms. Lisa MacLeod: Can you name names?

Mr. Andrew Teliszewsky: Name names of whom?

Ms. Lisa MacLeod: Could you provide us with who those names are that you met with?

Mr. Andrew Teliszewsky: My primary points of contact in this Premier's office, you mean?

Ms. Lisa MacLeod: Yes.

Mr. Andrew Teliszewsky: So that would be primarily Mr. Andrew Bevan, who is currently the Premier's principal secretary, I believe.

Ms. Lisa MacLeod: Okay. And who else?

Mr. Andrew Teliszewsky: The policy adviser—

Ms. Lisa MacLeod: Who is?

Mr. Andrew Teliszewsky: —responsible for energy is a gentleman by the name of Andrew Hurd.

Ms. Lisa MacLeod: And who else?

Mr. Andrew Teliszewsky: As it relates to an issue of some media and legislative salience, Mr. Brian Clow.

Ms. Lisa MacLeod: And who else?

Mr. Andrew Teliszewsky: On occasion, during briefings, the Premier's chief of staff, Mr. Tom Teahen, would be there.

Ms. Lisa MacLeod: Yes. Who else? Can you just give me the whole list, and then I won't have to keep asking you who else?

Mr. Andrew Teliszewsky: Oh, I'm just trying to recall. There have been several discussions.

Ms. Lisa MacLeod: And have you ever met with the Premier's campaign team, like David Herle or Pat Sorbara, about this?

Mr. Andrew Teliszewsky: About this topic, if I met with—no, I don't believe so.

Ms. Lisa MacLeod: You don't believe so. Have you met with anybody on the campaign team other than Tom Teahen?

Mr. Andrew Teliszewsky: I've had occasion to have discussions with Pat Sorbara over the course of the last number of months, but I don't believe we discussed—we have not discussed this topic in broad strokes—

Ms. Lisa MacLeod: Would you say it's fair to say that this is going to be a campaign issue in the upcoming campaign?

Mr. Andrew Teliszewsky: When would that campaign occur?

Ms. Lisa MacLeod: Well, I mean, you're in a good position to tell us.

Mr. Andrew Teliszewsky: I don't think I'd be one—

Ms. Lisa MacLeod: Maybe we could ask Mr. Tabuns, too.

Mr. Andrew Teliszewsky: I don't think I'd be one to speculate about what the issues can and cannot be during a particular campaign.

Ms. Lisa MacLeod: So have you prepared any issues notes for the campaign on the cancelled gas plants?

Mr. Andrew Teliszewsky: That's not my role as chief of staff.

Ms. Lisa MacLeod: Is it the role of one of your policy advisers?

Mr. Andrew Teliszewsky: I think that, largely speaking, the issues notes that are prepared to support the minister's House book in terms of preparation for question period are that—

Ms. Lisa MacLeod: So no policy advisers within the Liberal government are advising the Liberal campaign on serious issues as they pertain to perhaps the cancelled gas plants in Mississauga and Oakville? There have been no issue notes prepared by you or your department for the Liberal campaign in the next election?

Mr. Andrew Teliszewsky: I can't speak to what individuals in offices outside of our own have undertaken. In terms of issue notes that are requested, we do our best to answer any questions that come our way, be it requests from government or opposition caucus members about any particular public policy issues of the day—

Ms. Lisa MacLeod: But it's safe to say, then—

The Chair (Mr. Shafiq Qaadri): Colleagues. Ms. MacLeod, we of course welcome your line of questioning. Future campaigns are not really part of the mandate of this committee. I'm just flagging that for you. Please continue.

Ms. Lisa MacLeod: Well, I'm just asking because it is sort of the mandate to know about the Oakville and Mississauga gas plants.

When the auditor's report came out, you would have prepared issue notes for Ontario Liberal MPPs. Would any of those have reached Liberal campaign staff?

Mr. Andrew Teliszewsky: I don't know how to answer that specifically in terms of, once we release something to a caucus member or a colleague cabinet minister, what they do with that information is outside of our control.

Ms. Lisa MacLeod: Your leader has told this committee on a number of occasions that cancelling the gas plants in Oakville and Mississauga was a political decision. It was made by the campaign team in 2011. We know that within the next year there will be an election; I suspect it will be much sooner than that. If that does happen, I know this will be an issue, not because I say so, but because I think that the public has indicated it will be. With that in mind—and it was a politically motivated decision of a billion dollars. It was initiated by your Premier and your former Premier. It does warrant mention in documents or policy. Moving forward in the long-term energy plan, I think it's important to know whether or not you are providing communications advice or policy-issues advice to the central Liberal campaign that has now been established. I think that's important, number one; I'd like to hear your thoughts on that.

Secondly, and we noticed this on a couple of occasions—and the previous Minister of Finance and previous Minister of Energy, Dwight Duncan, sort of highlighted to us, whether he wanted to or not, that the Liberal government of the day, and certainly the current one, has been playing a bit fast and loose with the terminology of “ratepayer” versus “taxpayer.” That's very concerning to us, because it looks as if, it appears as if and it seems as if there was political motivation to exclude these extra political costs from the taxpayer/ratepayer by how they've been described.

In your briefing materials to the minister, to the Premier, to the OPA, have you ever come across this rationalization to separate what a ratepayer is from a taxpayer?

Mr. Andrew Teliszewsky: I'm sorry, could you repeat the question?

Ms. Lisa MacLeod: There's only one ratepayer/taxpayer. It's me, or Yak, or Mr. Tabuns or pretty much everybody in this room. When we pay our bills and we pay our taxes, we pay it as one individual. It appears to me that the Liberal government deliberately chose to suggest that the cancellation of Oakville was only \$40 million because they knew that was what the sunk cost was and that was what was going to affect the taxpayer. However, for over a year, the Liberal government,

including the Premier, including several of the cabinet and including the former Premier, repeatedly said that it was only \$40 million and deliberately hid the costs that were going to be borne by the ratepayer, which we would then learn would be in excess of \$900 million.

In your calculations—whether it's now or whether it's through the long-term energy plan, have you been part of those discussions? Have you reiterated that distinction? And why did the government do that? Why would they make a politically motivated decision and then continue that political motivation to try to separate what the ratepayer cost was and what the taxpayer cost was, knowing that at the end of the day, it's the same individual who pays both?

Mr. Bob Delaney: Chair, this is—

The Chair (Shafiq Qaadri): Point of order, Mr. Delaney.

Mr. Bob Delaney: Yes, it is a point of order, Chair. This is very close to the scope of the committee's mandate. Ms. MacLeod is asking a staffer to speculate on the motivation of policy of the government at a time in which he wasn't associated with that particular ministry. I think that's a little out of scope, and I would like the Chair to just clarify on these matters pertaining to either election briefings or matters of policy which are discussed by cabinet. Most if not all of those documents should be in possession of the member. What is or what is not in scope here?

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The Chair (Mr. Shafiq Qaadri): The frames of reference are getting stratospheric. I think it's a speculative question.

Mr. Teliszewsky, you may answer the question as you see fit. However, as it is a speculative question, you're not required to. Please proceed.

Mr. Andrew Teliszewsky: I would refer the committee to the testimony of experts who have spoken about this very delineation between the ratepayer and the taxpayer; namely, the robust discussions you've had with Mr. Colin Andersen, Ms. JoAnne Butler and Deputy Minister Imbrogno, who, I think, upon reviewing their testimony in my own preparation here, did their best to explain that delineation for the members of this committee.

Ms. Lisa MacLeod: Okay. I just want it to be very clear that for a very long period of time, this Liberal government chose to announce that there was only a certain amount of costs that was going to be borne by the taxpayer, because they decided to split hairs and not actually acknowledge the costs that were going to be borne by the ratepayer, which is effectively the same individual.

I just want to go back to this, because you then put forward a long-term energy plan, and the long-term energy plan talks about what energy prices or rates would be over the next period of years—the next 20 years or what have you. In that, I asked the Minister of Energy in the Legislature if the costs of the cancelled gas plants would be incorporated into that increase. He initially stood up and said no, which, I think, concerned a great

deal of us. Then he came back and he backtracked off of that.

I'm actually not clear on whether or not Bob Chiarelli understands that somebody, meaning the tax base of Ontario and the ratepayer base of Ontario, is actually going to have to pick up the costs of these cancelled gas plants.

Is it understood by the Liberal government that rate-payers across Ontario are going to have to pick up that billion dollars' worth of cancellation fees, lost power generation and those extra delivery charges? Is that understood, that that billion dollars has to be picked up by somebody?

Mr. Bob Delaney: Chair, on much the same point of order, we have had this discussion before, and the long-term energy plan is not within the scope of our committee's terms of reference.

The Chair (Mr. Shafiq Qaadri): It's within the scope. Proceed.

Ms. Lisa MacLeod: I like that you're trying to shut me down there, Bob, but it's not going to work.

Mr. Bob Delaney: You are entitled to your opinion, as I am to mine.

Ms. Lisa MacLeod: I'm asking why your government chose to mislead the Legislature and say it was only a \$40-million bill—

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, I'd ask you to just please use parliamentary language, if at all possible.

Ms. Lisa MacLeod: Thank you. I'll withdraw the word "mislead."

I would ask why this government would pretend for so long that there was one cost of \$40 million when it was \$1 billion. I would ask, then, why this government decided to suggest that it was a taxpayer issue when they knew quite well it was also going to be coming from the rate base. I would ask why this government, in its last long-term energy plan, which was only tabled two and a half months ago, would not include the billion-dollar price tag and how it is going to be paid for by the public here in Ontario. I think that's a significant question I not only ask of my colleague opposite, but I would ask of the deputant here before us today.

Mr. Bob Delaney: But you know as well as the rest of the committee does—

Ms. Lisa MacLeod: This is not for debate with you; this is for debate with the witness.

Mr. Bob Delaney: No, but you did direct the question to me.

Ms. Lisa MacLeod: I'd just ask that—

The Chair (Mr. Shafiq Qaadri): The floor is yours, Mr. Teliszewsky.

Mr. Andrew Teliszewsky: The costs related to the relocation of those two natural-gas-fired power plants are included in the OPA's projections, which form the basis of the long-term energy plan.

I can testify to the fact that we participated in meetings where the deputy minister specifically instructed the OPA, in terms of the cost profile that's included in the

long-term energy plan, to include exactly the format that the Auditor General's reports utilized. Certainly, this committee has had testimony from the OPA and the benefit of their input into the distinction between their costing and where the auditor ultimately came in at. It was the direction of the ministry, which ultimately formed the backbone of the long-term energy plan that the projected costs would be incorporated as best as possible into the long-term energy plan.

I've brought a copy of the long-term energy plan to speak to precisely that point and—

Ms. Lisa MacLeod: Just one second, Andrew, if you don't mind.

Could we ensure that every member of the committee is given a copy of the long-term energy plan, and can we ensure that the page that Mr. Teliszewsky is referring to is highlighted for the members of this committee so that we may discuss it?

The Chair (Mr. Shafiq Qaadri): (a) You were given it and you may be given it again, and (b) yes.

Ms. Lisa MacLeod: Thank you.

Mr. Andrew Teliszewsky: I'm going to speak to the total cost of electricity service forecast, which is figure 6 on page 15, and there is a breakout box there which speaks to the—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Andrew Teliszewsky: —total cumulative cost of electricity service. So this again, to your point, includes the cost allocation as described by the Auditors General.

The total cumulative cost of electricity service is expected to be less than previously forecast by \$16 billion in the near term, and that's explained in parenthetical notation here, in 2013.

Ms. Lisa MacLeod: Can I just ask a quick question? What was it previously forecast at?

Mr. Andrew Teliszewsky: It's a comparison table which shows you—

Ms. Lisa MacLeod: You just said, though, that it would be less than previously forecast by \$16 billion, so what was it—

Mr. Andrew Teliszewsky: It's forecast in the 2010 long-term energy plan.

Ms. Lisa MacLeod: Right. And what was it previously forecasted at?

Mr. Andrew Teliszewsky: The cumulative cost, you'd have to add that all up, all the billions per year—

Ms. Lisa MacLeod: So it's less than clear, right?

Mr. Andrew Teliszewsky: Well, no. You could add up the numbers. They are on the chart there.

Ms. Lisa MacLeod: But I just asked you to do that and you couldn't do it, so it's a little less than clear.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: Thank you, Mr. Chair, and good afternoon, Mr. Teliszewsky. Do you follow the requirements of the Archives and Recordkeeping Act in managing your electronic and hard copy records?

Mr. Andrew Teliszewsky: We have had the benefit of some training in this regard and, as well, ensure that staff follow all of those protocols.

Mr. Peter Tabuns: So do you follow the requirements of the act?

Mr. Andrew Teliszewsky: Based on the training that we have received, I, at this moment in time, would say that we are in compliance with the act.

Mr. Peter Tabuns: And you personally are in compliance?

Mr. Andrew Teliszewsky: Based on the training that I received, I believe myself to be in compliance.

Mr. Peter Tabuns: And you also believe that all members of your staff adhere to the act?

Mr. Andrew Teliszewsky: Based on the training that we've received, I believe myself and my staff are in compliance.

Mr. Peter Tabuns: And within your minister's office, who is responsible for seeing that the staff are in compliance?

Mr. Andrew Teliszewsky: That would be the chief of staff, myself.

Mr. Peter Tabuns: That's you. Okay.

How does your minister usually communicate a change in policy to the Ontario Power Authority?

Mr. Andrew Teliszewsky: What do you mean by a change in policy?

Mr. Peter Tabuns: A direction. How does the minister give an order to the Ontario Power Authority?

Mr. Andrew Teliszewsky: A direction to the Ontario Power Authority is done via directives, written directives, I believe. In the testimony that the minister provided, you had some exchange to that effect.

Mr. Peter Tabuns: And as chief of staff, what would you do if the OPA was acting without a clear direction from the minister?

Mr. Andrew Teliszewsky: I can't speculate on a hypothetical.

Mr. Peter Tabuns: If the OPA was acting in a direction that wasn't supported by a clear directive, would you take action to correct them?

Mr. Andrew Teliszewsky: The purpose of the directives is to provide the OPA with procurement authority and the government's policy framework within which they are to act, so they are not able to act outside the bounds of those directives as they're set out.

Mr. Peter Tabuns: Do you ever communicate major changes in policy or major changes which could have large rate base or tax base implications without a directive?

Mr. Andrew Teliszewsky: Directives are those which provide the OPA with procurement authority, which would have the largest impact on ratepayers.

Mr. Peter Tabuns: So you would always use a directive.

Mr. Andrew Teliszewsky: The directive mechanism is the way in which the government provides the OPA with procurement authority.

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Mr. Peter Tabuns: What are the legal risks in communicating a major change in policy without a directive or a letter?

Mr. Andrew Teliszewsky: I have not had the benefit of formal legal training, so I don't think I could answer your question fully.

Mr. Peter Tabuns: Do you expect the Ontario Power Authority to intuit the wishes of the government or to follow explicit direction?

Laughter.

Mr. Peter Tabuns: Mr. Chair, I'm glad you approve of my question.

Mr. Andrew Teliszewsky: I'm sorry, could you repeat the question?

Mr. Peter Tabuns: Do you expect the OPA to intuit the wishes of the government?

Mr. Andrew Teliszewsky: What do you mean by "intuit"?

Mr. Peter Tabuns: To guess in a very accurate way as to what you want done. Or do you expect them to follow directives?

Mr. Andrew Teliszewsky: The directive mechanism, as outlined in the Electricity Act, is the mechanism by which the government sets high-level policy framework and provides the procurement authority for the Ontario Power Authority to engage in their various activities.

Mr. Peter Tabuns: So the use of directives is the way that you give instructions to the OPA, and that's what you expect to be used when instructions are given, correct?

Mr. Andrew Teliszewsky: The relationship between the ministry, the minister's office and the Ontario Power Authority is—it's a collaborative process. It's a collaborative process that includes in-person discussion and formal directives that provide procurement authority, and so the procurement authority resides through the directive power.

Mr. Peter Tabuns: Okay, thank you. I will turn my questions over to Mr. Bisson and look forward to seeing you again shortly.

Mr. Gilles Bisson: How much time do I have, Chair?

The Chair (Mr. Shafiq Qaadri): Monsieur Bisson, you have about 15 minutes.

Mr. Gilles Bisson: Wow.

The Chair (Mr. Shafiq Qaadri): Just before you begin, I'd like to acknowledge our MPP-elect for the circumscription of Niagara Falls, Mr. Gates. Welcome.

Mr. Gilles Bisson: Good day, Mr. Gates. Nice to see you.

At the time that the documents in question were being requested by the estimates committee, you were at Infrastructure Ontario, correct?

Mr. Andrew Teliszewsky: No, that's not correct.

Mr. Gilles Bisson: No? Okay, where were you? I thought you were at IO.

Mr. Andrew Teliszewsky: No, I was at the Ministry of Infrastructure, serving as Minister Chiarelli's chief of staff in the immediate aftermath of the 2011 election to the investiture of the new government in February 2013.

Mr. Gilles Bisson: So you were working for Chiarelli at the time?

Mr. Andrew Teliszewsky: For Minister Chiarelli, I served as his chief of staff at the Ministry of Infrastructure and Ministry of Transportation.

Mr. Gilles Bisson: Yes, that's what I'm saying. That's what I meant by IO.

Mr. Andrew Teliszewsky: Yes, sorry. I believe you mentioned Infrastructure Ontario.

Mr. Gilles Bisson: Yes, I know. You were essentially in the minister's office.

Mr. Andrew Teliszewsky: Yes.

Mr. Gilles Bisson: So at the time, were you aware of the request by the estimates committee in order to request these documents?

Mr. Andrew Teliszewsky: The estimates committee request of the Ministry of Energy?

Mr. Gilles Bisson: Yes.

Mr. Andrew Teliszewsky: I would have been aware through media sources at the time.

Mr. Gilles Bisson: So you would have known that there was a request by the estimates committee in order to ask for documents in relationship to the decisions around the gas plants cancellation. You would have been aware of that.

Mr. Andrew Teliszewsky: Generally aware, but not in my course as a staffer at the Ministries of Transport and Infrastructure at the time.

Mr. Gilles Bisson: Did you have any discussions at the time with other political staff in regard to this particular issue?

Mr. Andrew Teliszewsky: I don't believe so, no.

Mr. Gilles Bisson: Do you ever talk to political staff about any issue?

Mr. Andrew Teliszewsky: Certainly. I engage with my colleagues on a very frequent basis.

Mr. Gilles Bisson: This issue started to become larger and larger as time went on. The request was made; it was refused. Mr. Leone came in the House and then introduced a question of a prima facie case of contempt. At that point, were you aware that that was going on?

Mr. Andrew Teliszewsky: Certainly, I would have been aware, again, through provincial media sources' updates that there was this debate happening in the chamber.

Mr. Gilles Bisson: Okay. Did you have any discussions with anybody on political staff in regard to what was going on at that point in the House when it came to an allegation of a prima facie case of contempt?

Mr. Andrew Teliszewsky: No.

Mr. Gilles Bisson: Really? Did you hear any kind of rumblings or any kind of noise about it?

Mr. Andrew Teliszewsky: Well, as I just testified, I would have heard about it through the various sources—provincial media—that were reporting on the issues of the day.

Mr. Gilles Bisson: All right. Did you hear today, for example, that Andrea Horwath said no to any new taxes or fees when it comes to what the Premier had been suggesting in regard to infrastructure in this budget?

Mr. Andrew Teliszewsky: I did hear tell of your leader's media studio event this morning.

Mr. Gilles Bisson: Okay. Did you have any discussion with political staff about that issue?

Mr. Andrew Teliszewsky: About your leader's testimony—

Mr. Gilles Bisson: Yes, about my leader's comments this morning.

Mr. Andrew Teliszewsky: No.

Mr. Gilles Bisson: Really?

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, as you're well aware, the—

Mr. Gilles Bisson: No, this is all related. This is all related.

The Chair (Mr. Shafiq Qaadri): It's not related to the scope.

Mr. Gilles Bisson: It's all related to the scope, and if you permit, you will see why.

I'm having a bit of a hard time accepting that in fact there is no discussion by political staff when it comes to the largest political issue going on in the government at the time. You're telling me that you're not aware of any discussion by political staff about what was going on in regard to the request—of the estimates committee being refused those documents?

Mr. Andrew Teliszewsky: My role was at the Ministry of Transportation and Infrastructure, so we were engaged in our own public policy files of the day. When my counsel or advice or information is sought from other political staff, it typically relates to when our files would intersect. In the case of the Premier's office, if they had a question about a Ministry of Transportation file—at the time we were also engaged in some conversations with the city of Toronto with regard to their public transportation. That is what my conversations—

Mr. Gilles Bisson: I understand that the majority of your discussion would obviously be about your portfolio, but I'm having a bit of a hard time accepting that there was not any kind of discussion by political staff in regard to the prime facie case of contempt regarding the non-release of documents to the estimates committee. You never had a chat with anybody about that?

Mr. Andrew Teliszewsky: So my role was at the Ministry of Transportation—

Mr. Gilles Bisson: No, I understand that, and you would have been consumed with your files. I get that, and that's fair. But you're telling me that you never had any discussions with political staff about the issue of the prima facie case of contempt—with no political staff?

Mr. Andrew Teliszewsky: My advice was not sought.

Mr. Bob Delaney: Chair, point of order.

The Chair (Mr. Shafiq Qaadri): Point of order, Mr. Delaney.

Mr. Bob Delaney: Asked and answered.

The Chair (Mr. Shafiq Qaadri): Pardon me?

Mr. Bob Delaney: The question has been asked and answered.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, for that fact.

Mr. Gilles Bisson: Thank you, my learned friend.

So I'm asking you again: Just to be clear, you had no discussion with political staff about that issue as it was the dominant political issue hitting the government at the time, through May, June and July of that year?

Mr. Andrew Teliszewsky: I myself did not have any exchange with other political staff on this topic.

Mr. Gilles Bisson: Did you have any of those discussions with your minister?

Mr. Andrew Teliszewsky: My minister and I have frequent discussions about the issues of the day, about our public policy files, about how things went at question period for him. I couldn't speculate about what conversations I have had with my minister. However, they would have primarily revolved around the work that we were engaged in at the ministry—

Mr. Gilles Bisson: So you never had discussions with your minister about the number one political issue hitting the government at the time when it came to a possible ruling of contempt—never discussed it?

Mr. Andrew Teliszewsky: I don't believe my minister and I had any specific conversation about it. We didn't sit down to have a specific conversation about this issue. We were engaged in the work at the Ministry of Transportation and Infrastructure at the time.

Mr. Gilles Bisson: It's kind of hard to believe. You're political staff—and I've been around this place long enough, both on the opposition side and the government side. When the biggest issue hits your government, it's the buzz within all political staff and all ministers and politicians around this place—the talk about our views, and sometimes they're just our private views, in this case, with political staff, on the issue. You're telling me this issue hits the floor, this issue hits the province, the government is now in a position where they may be found in contempt of the House, and no discussions whatsoever can you recall being had between yourself and other political staffers or the minister in regard to this issue?

Mr. Andrew Teliszewsky: That's correct.

Mr. Gilles Bisson: Wow. I have a really hard time believing that.

Mr. Tabuns, would you want to try to do something with this guy?

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. Peter Tabuns: Mr. Bisson, I may well have questions. You've left off where?

Mr. Gilles Bisson: I can continue. I just thought you had something.

Mr. Peter Tabuns: No. Be my guest.

Mr. Gilles Bisson: Okay. I thought my colleague wanted to get in on this.

Let's get to the next step. So then the Speaker finds a prima facie case of contempt. It was August, if I remember correctly. Did you have any discussions at that time in regard to this particular issue with political staff?

Mr. Andrew Teliszewsky: In August 2012?

Mr. Gilles Bisson: Yes. When the ruling was found, yes.

Mr. Andrew Teliszewsky: I did not have discussions about a portfolio that did not intersect with the Ministry of Transportation and Infrastructure.

Mr. Gilles Bisson: So let me see. I just want to be clear. The Speaker finds that there's a prima facie case of contempt against the government for not having released the documents, and the political staff have no discussion about it?

Mr. Andrew Teliszewsky: I'm sorry. Could you repeat the question?

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Mr. Gilles Bisson: I'm going to do it again. The Speaker finds that there's a prima facie case of contempt against the government for not having released those documents, and you're telling me that political staff have no discussions or thoughts on that particular issue? They didn't talk about it?

Mr. Andrew Teliszewsky: I personally cannot testify as to what other political staff may or may not have done at that time. I undertook my responsibilities as chief of staff to the Minister of Transportation and the Minister of Infrastructure quite seriously—

Mr. Gilles Bisson: I'm sure you did.

Mr. Andrew Teliszewsky: It is a busy portfolio, and I dedicated my time to the government—

Mr. Gilles Bisson: And I would expect you would. That's what you're paid to do.

My point is, you've got to do your job, and I understand that 99% of your effort is around your minister and the portfolio that he's responsible for. But I have a really hard time believing that no political staff talked about this from the time that there was a request by the committee for documents that were refused to the point of a ruling—that political staff didn't have a discussion about it.

The reason I'm asking the question is, it's pretty obvious that this was the biggest issue driving the government at the time, and if you're telling me that there were no discussions, I have a hard time believing it. I don't see you as a credible witness at this point, quite frankly.

Mr. Bob Delaney: Chair, on a point of order.

The Chair (Mr. Shafiq Qaadri): Yes, but before you speak—Mr. Bisson, I don't think that's really appropriate commentary. You're free to hold your views, but to express them on the—

Mr. Gilles Bisson: Well, it's like saying you were standing next to a building where there was a burning fire going on, and then you walked away and didn't tell anybody that you saw the building burning.

The Chair (Mr. Shafiq Qaadri): Fires usually burn, Mr. Bisson—

Mr. Gilles Bisson: That's not how humans operate, so I'm asking the question again—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, a point of order.

Mr. Bob Delaney: Chair, thank you for the first part of my point of order.

My second point of order is, this is six times that I've counted Mr. Bisson asking precisely the same question. It has been asked and answered. To continue to persist with this amounts to badgering the witness, and I would ask that he move on.

Ms. Lisa MacLeod: No it doesn't. Come on.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Mr. Bisson, with all the comments, I'd invite you to please proceed, but just be mindful of some of the comments made.

Mr. Gilles Bisson: Well, I thank you, but you follow where I'm going? What I'm saying is, human nature is that if something like that is going around, you're going to talk about it to your colleagues and friends. I just have a hard time believing that well-paid political staff working for the Liberal government didn't have discussions in regard to what was going on with the *prima facie* case of contempt. The rest of my questions flow from that. What you're telling me is that you had no discussions about this. Really?

Mr. Andrew Teliszewsky: My role at the Ministries of Transportation and Infrastructure was to work with ministry staff at the time there to move forward the government's agenda as it related to those two portfolios.

Mr. Gilles Bisson: Rightfully so.

Mr. Andrew Teliszewsky: I was not a staffer in the government House leader's office. I was not a staffer in the whip's office. I was not a staffer in the Premier's office. I wasn't a staffer in the Minister of Energy's office at the time. As I testified earlier, it is in instances like that, where there is an intersection of responsibility, where I would suggest there would be an appropriate consultation or conversation amongst political staff. But if you're suggesting that there should have been a conversation between the chief of staff and the Minister of Transportation—

Mr. Gilles Bisson: I'm asking if there was a conversation.

Mr. Andrew Teliszewsky: There was not a conversation with the chief of staff to the Minister of Transportation about matters that were before the Speaker or chamber at the time, as it was outside the purview of the Ministry of Transportation and the Ministry of Infrastructure.

Mr. Gilles Bisson: We all know that political staff are a gregarious lot. They work hard, they're underpaid, and they're really interested in their jobs and especially interested in the future of what happens to their political party or the government.

I have a really, really hard time with you as a witness coming here and saying that you never heard any discussion, nobody ever talked to you about it, you never talked to your minister, you never talked to any other political staffer within the Liberal government about everything leading from the time that the documents were not released when requested to the point that there was a *prima facie* case of contempt. It was the number one issue driving the Legislature and your political party at the time, as well as mine and the Conservatives, and

you're telling me there was no discussion. I'm going to ask you one last time: Was there any discussion? Last chance.

Mr. Andrew Teliszewsky: I can only testify as to any discussions that would have occurred with myself in my capacity at the time. I was not involved in any of the decisions or discussions with regard to those matters, as they did not pertain to my role at the time.

You mentioned political staff and the scuttlebutt that occurs amongst political staff. I myself carry a policy of keeping that to a minimum for myself. I can only testify for myself that I personally—also to the point that you raised in terms of how busy the portfolios are that I've been engaged in—don't have the time to engage in rumour, innuendo and speculation. I can only move forward with the files that I have at the time.

Mr. Gilles Bisson: All right, let me ask you this, then: Do you think that it was right for the government to withhold those documents when they were requested?

Mr. Andrew Teliszewsky: I'm sorry. Could you repeat the question?

Mr. Gilles Bisson: Was it right—

Mr. Bob Delaney: Chair, again on another point of order: He's asking the witness to speculate.

Mr. Gilles Bisson: No, it's a question.

Mr. Bob Delaney: He's welcome to ask what he knows but not to ask him—

Mr. Gilles Bisson: So my question is, do you think it was right—

The Chair (Mr. Shafiq Qaadri): Please proceed, Mr. Bisson.

Mr. Gilles Bisson: My question is, do you think it was right for the government to not release those documents to the estimates committee when they were asked to be released? Yes or no, or you have no opinion about that?

Mr. Andrew Teliszewsky: I was not at the Ministry of Energy at the time and so I don't think that any of my speculation in this regard would be helpful.

Mr. Gilles Bisson: The Speaker found a *prima facie* case of contempt, which essentially says, "You know what? Where there's smoke, there's fire." Do you think that the Speaker was correct in giving that ruling?

Mr. Andrew Teliszewsky: I am not an expert in parliamentary procedure. I believe you had testimony from the former Speaker of the Canadian House of Commons to speak to that very issue.

Mr. Gilles Bisson: So Infrastructure Ontario, in the end, did they have some kind of a role in regard to the cancellation of the gas plants?

Mr. Andrew Teliszewsky: I understand that Infrastructure Ontario at various points in time has been engaged with the Ministry of Energy or the Ontario Power Authority to—

Mr. Gilles Bisson: That's right, and were they engaged prior to the finding of a *prima facie* case of contempt? Were there any discussions between the Ministry of Energy and your office, your ministry, in regard to the

cancellation of the gas plants prior to the contempt ruling?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Andrew Teliszewsky: Between—sorry. Between whom?

Mr. Gilles Bisson: Between your ministry and the Ministry of Energy or any other level of—any other branch of government. Were there discussions in regard to the cancellation of the gas plants?

Mr. Andrew Teliszewsky: Any of the work that Infrastructure Ontario would have engaged in would have been between Infrastructure Ontario and the host ministry that they would work for. So—

Mr. Gilles Bisson: That's right. Did your ministry have any discussions with the Ministry of Energy in regard to the cancellation of the gas plants prior to the *prime facie* case of contempt being ruled?

Mr. Andrew Teliszewsky: Our ministry, as in, at the time, Ministry of Infrastructure?

Mr. Gilles Bisson: Yes.

Mr. Andrew Teliszewsky: In my role as the chief of staff to the Ministry of Infrastructure, I did not engage in any conversations with the Ministry of Energy at the time with regard to that file.

Mr. Gilles Bisson: Any time left?

Le Président (M. Shafiq Qaadri): Huit secondes.

Mr. Gilles Bisson: Wow. It's pretty hard to buy what you're telling us, because your ministry had to have some involvement in regard to the contracts that were signed.

Le Président (M. Shafiq Qaadri): Merci, monsieur Bisson, pour vos questions et votre contribution. Je passe la parole maintenant au gouvernement.

Monsieur Delaney.

Mr. Bob Delaney: Thank you very much, Chair.

Ms. Lisa MacLeod: Here we go. Point of order.

Mr. Bob Delaney: Feel free, as long as it's done professionally.

Mr. Teliszewsky, just before we get into some of the questions, after the two rounds you've had, are there any particular points you wanted to add that you have not been able to get in?

Mr. Andrew Teliszewsky: No, thank you.

Mr. Bob Delaney: Okay. With regard to your employment in the office of the Minister of Energy, when did you start working there?

Mr. Andrew Teliszewsky: At the Ministry of Energy?

Mr. Bob Delaney: Yes.

Mr. Andrew Teliszewsky: It would have been after transition in February 2013.

Mr. Bob Delaney: Okay. So this means that the estimates motion asking for correspondence related to the gas plants would not have captured any of your documents because the motion asked for correspondence up to December 2011. Correct?

Mr. Andrew Teliszewsky: Correct.

Mr. Bob Delaney: Back on September 10, 2013, this committee passed a motion requesting documents from the Ministry of Energy from January 1, 2012, to August

2013. So if my understanding of this is correct, that would be the first committee motion that would have applied to any correspondence from you. Correct?

Mr. Andrew Teliszewsky: Correct.

Mr. Bob Delaney: You were actually in the ministry on March 5, 2013, at which point the government members of the committee moved a motion directing a government-wide search of all documents related to the relocations of Oakville and Mississauga, both gas plants, and the motion would have required all government ministries, ministers' offices, Cabinet Office, Premier's office and the OPA to conduct a search. Do you recall that?

Mr. Andrew Teliszewsky: As I testified in my opening statement, we've done our best to comply with the motions of this committee.

Mr. Bob Delaney: Were you aware that that particular motion was voted down by the opposition members of the committee?

Mr. Andrew Teliszewsky: As motions come and go—I understand they are frequent here at committee—when something is defeated, it dies here and we take no further action.

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Mr. Bob Delaney: As you were not with the Ministry of Energy until the formation of the new government in 2013, you would then have had no seat at the table, no ear to the discussions, nor would you have known much about the negotiations with the parties before you came to join the Minister of Energy as his chief of staff. Correct?

Mr. Andrew Teliszewsky: Correct. As I testified, I was busy at the Ministry of Infrastructure and the Ministry of Transportation at the time.

Mr. Bob Delaney: Okay. Let's talk a little bit about commercial sensitivity on government-procurement projects. To look back to the spring of 2012—and again, you were not at that time with the Ministry of Energy yet. But when the estimates committee moved a motion asking for documents related to the two gas plants, we're all well aware that, at that time, negotiations were ongoing with the proponents of both the Oakville and Mississauga power plants. Knowing what you do know now in your role as chief of staff to the Minister of Energy, would it be accurate to say that any outstanding negotiations, on whatever the project might be, that are not complete would be classified as commercially sensitive?

Mr. Andrew Teliszewsky: I would agree with that statement, yes.

Mr. Bob Delaney: So in general, turning over commercially sensitive information could compromise any government's position and may ultimately lead to a far more expensive and complex situation, which would be litigation. Correct?

Mr. Andrew Teliszewsky: Yes.

Mr. Bob Delaney: As you're aware, there have been a series of document-request motions, all of which the government has complied with, to produce, in total, so far, some 300,000 documents over the life of this com-

mittee's work. Given the volume of the documents—we've already acknowledged that it was a learning process in a search of hitherto unprecedented scale and scope. In fact, the testimony from the secretary of cabinet, ministry staff and the OPA has consistently stated that the searches were done in good faith. In your time with the ministry, would you agree with that?

Mr. Andrew Teliszewsky: As I testified, we've done our best to comply with the wishes of this committee, yes.

Mr. Bob Delaney: Okay. When Deputy Imbrogno testified before the committee, he described the enormous amount of time and resources that went into searching for, identifying and compiling documents related to the estimates committee motion. To use his words, he told us:

"We basically shut the ministry down for that search period ... a lot of the time and effort was spent with policy legal staff going through and determining what is responsive and what is non-responsive ... that took a lot of time and effort, but the ministry basically worked 24/7, and that was the priority for the ministry."

Perhaps you could speak to the time and the effort that go into these document-production requests.

Mr. Andrew Teliszewsky: Certainly. The time and effort on the part of ministry staff, both political and bureaucratic, is quite significant, because certainly the scope of some of the requests has been rather broad. In fact, I believe it's the Ontario Power Authority that is yet to fully come into compliance with that motion in terms of being able to table everything that has been asked for, just based on the sheer volume. They certainly are in the processes of updating the committee on a rolling basis. Our own ministry did the same to come into compliance late last year with those document-production requests.

In terms of the process, we have also now engaged an outside legal firm to support this effort, precisely to your point, to assist in the redaction process. The government has secured legal experts to help sort and sift through all of the documents to be able to provide to the committee in a workable format, so that presents a lot of time challenge. It also has been a fiscal challenge for the ministry in order to maintain the services of this outside legal counsel.

Mr. Bob Delaney: Okay. I just want to talk, then, a little bit more about record-keeping. Were you ever directed by any of the former Ministry of Energy staff to delete emails?

Mr. Andrew Teliszewsky: No.

Mr. Bob Delaney: Former Premier McGuinty has testified that there had been a lack of adequate training for the staff in this area, and in fact, at one point while we had an IT expert here, I was talking with him about the evolution of the technology. Indeed, 10 years ago, when we formed government, the technology to simply retain the volume of emails that the province receives didn't exist.

Going back to Premier McGuinty and his June 7 response to the report from the Information and Privacy

Commissioner, he stated, "I agree with the commissioner that despite some efforts, we did not devote adequate resources and attention to ensuring all government staff in all ministries and in the Premier's office were fully informed of their responsibilities. This inadequate training made it difficult for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated."

Would you agree with the former Premier that there was a lack of formal training with respect to how to manage records?

Mr. Andrew Teliszewsky: Yes, I would.

Mr. Bob Delaney: Okay. With that said, I'm sure it's apparent to most staff that they were not required to keep every single record all of the time. This also being said, we know that the practices of record-keeping have been substantially improved over the course of the last year.

The Archives and Recordkeeping Act explains transitory records as those that are not required to be kept, and the common records series defines these records as "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record."

According to the act, there are many types of records that would fall into this transitory category—for example, duplicates, records of short-term value, intermediate records, draft documents. Archives of Ontario even has a fact sheet entitled *The Fine Art of Destruction: Weeding Out Transitory Records*.

How have staff benefited from the extra effort paid to what is and what is not a transitory record and what must and what must not be kept?

Mr. Andrew Teliszewsky: Political staff have now received significant training to understand better what we are to do with regard to the records that cross our desks and that cross through our email accounts. That training occurred precisely following the issues that were raised at this committee, and the Information and Privacy Commissioner says—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side: Ms. MacLeod.

Ms. Lisa MacLeod: Thanks very much, Andrew. You've stated repeatedly—and we're not getting, I think, the clearest of answers from you, with all due respect, particularly of your time when you were in transportation and infrastructure. I'm going to ask you a few questions, and if I don't get to all of them, I think I'll be calling for you to come back to the committee, just so you know.

Do you know who David Livingston is?

Mr. Andrew Teliszewsky: I'm sorry, could you repeat that?

Ms. Lisa MacLeod: Do you know who David Livingston is?

Mr. Andrew Teliszewsky: Yes.

Ms. Lisa MacLeod: How do you know who he is?

Mr. Andrew Teliszewsky: David Livingston is a former staffer with the Ontario government.

Ms. Lisa MacLeod: Yes. Where? Infrastructure Ontario?

Mr. Andrew Teliszewsky: He began his work at Infrastructure Ontario, yes.

Ms. Lisa MacLeod: And then what was his next role?

Mr. Andrew Teliszewsky: After that, he moved on to become chief of staff to then-Premier McGuinty.

Ms. Lisa MacLeod: So when he talks about the cancelled gas plants, one would assume that Mr. David Livingston knows a thing or two, would you say?

Mr. Andrew Teliszewsky: I believe you've had—

Ms. Lisa MacLeod: He was here.

Mr. Andrew Teliszewsky: —opportunity to speak with Mr. Livingston—

Ms. Lisa MacLeod: Right. Did you ever speak to David Livingston when you were at transportation and infrastructure and when he was at Infrastructure Ontario?

Mr. Andrew Teliszewsky: I think this is an important point, and it goes to some of the questioning from—

Ms. Lisa MacLeod: I just asked for a simple yes or no. I don't need to be explained different points. Did you ever speak—

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, you cannot impose a “yes or no” on a witness's answers.

Ms. Lisa MacLeod: Okay.

Mr. Andrew Teliszewsky: It goes to your line of questioning right now, and it certainly goes to the line of questioning from the third party, in terms of Infrastructure Ontario's relationship across other ministries.

Infrastructure Ontario is an agency that resides within the Ministry of Infrastructure, yes. The CEO would report in to the minister, yes. But as that agency was set up to be a nimble and important institution that would engage in procurement and engage in other transactions on the part of the Ontario government, they would be engaged by another ministry to do a particular line of business.

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Ms. Lisa MacLeod: Okay.

Mr. Andrew Teliszewsky: So in that regard they would have been engaged by the Ministry of Energy or another ministry to undertake some efforts.

Ms. Lisa MacLeod: Okay. Just let—

Mr. Andrew Teliszewsky: For example, they would undertake—

Ms. Lisa MacLeod: I know—

Mr. Andrew Teliszewsky: —procurements for health care infrastructure at the Ministry of Health.

Ms. Lisa MacLeod: Thank you. I'd like to just continue to ask some questions.

Mr. Andrew Teliszewsky: I would not have had discussions with David Livingston about the work that he was doing with the Ministry of Health—

Ms. Lisa MacLeod: Well, I mean, this is getting ridiculous. He's not prepared to listen to any questions I want to ask.

Mr. Andrew Teliszewsky: —as it didn't relate to the Ministry of Infrastructure.

Ms. Lisa MacLeod: He's just speaking over me.

Mr. Andrew Teliszewsky: Infrastructure Ontario would have been charged with the work around the ONTC, which was certainly something that—

Ms. Lisa MacLeod: Thanks. I actually would like to ask another question.

Infrastructure Ontario and the Minister of Energy would have been involved in negotiations with TCE and Greenfield South. So David Livingston, the former chief of staff to the former Premier, the former head of Infrastructure Ontario—I've had him into previous committees before, government agencies, during discussions. He was in on those negotiations. Bob Chiarelli, the now Minister of Energy, the former Minister of Infrastructure and Transportation and all-round best friend to Dalton McGuinty, was also part of discussions in cabinet, as we know because of a cabinet minute that was walked around and it was discussed.

You have worked for Bob Chiarelli as Minister of Transportation and Bob Chiarelli as Minister of Energy. We know that David Livingston, in both his capacities, would have been in negotiations with TCE and Greenfield, particularly with Infrastructure Ontario. Given your previous role and your current role, how can you stand here and expect anybody to believe you have any credibility that your ministry was not involved in the gas plant scandal when the timeline, the ministry, the people—all of that—are connected, and you can only give us a response that says “can't speculate on discussions I had with my minister”? This makes no sense. I must say that my colleague in the third party is talking about your credibility. You've come here today to effectively whitewash and stonewall us. We're here, with all due respect, to try and get a job done. It would be helpful if you'd answer our questions and be truthful about those answers.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, I think we're probably over the top with this one. I'd ask you just to please respect the witness's—

Ms. Lisa MacLeod: Well, I want to know how he can say that he and his ministry were not involved with the gas plant scandal when David Livingston, former chief of staff to Premier Dalton McGuinty and former head of Infrastructure Ontario, has indicated that they were.

I think you have a real problem if you can't answer that or you won't answer that, and I think you have a real problem in trying to maintain any credibility here with respect to documents and briefings that you're not prepared to inform us about, because it makes very little sense that anybody in your government, particularly somebody who works for a senior minister, particularly one who was so close to the Premier, Dalton McGuinty at the time, had no discussions. You briefly mentioned that you have spoken with Pat Sorbara about this, but then you moved on.

This is very disappointing, that in one element you're going to acknowledge a discussion, and then in another you're backing away from that.

So I think what I'm going to do, Chair—I'll ask my colleague if he has any other questions. Jim, do you have any other questions? And just before you do, I want to say this: I will be asking for this witness to come back, because I want to review his Hansard. I want to review some of the other information that we have. Can I make that request right now?

The Chair (Mr. Shafiq Qaadri): So subcommittee, yes.

Ms. Lisa MacLeod: Okay. And Mr. McDonell has a couple of questions.

Mr. Andrew Teliszewsky: Sorry. Can I respond to the question?

The Chair (Mr. Shafiq Qaadri): Mr. McDonell, you have the floor.

Mr. Andrew Teliszewsky: I'm sorry. There was a lengthy statement there. Can I respond to that at all?

The Chair (Mr. Shafiq Qaadri): There's three and a half minutes on the clock. So as you like, whoever has the floor.

Mr. Jim McDonell: I had a question. We talked about the information being redacted because of its commercial value, but was the Speaker not very clear that that was not a reason that any information should be held back from the committee? I'm just wondering why that was considered acceptable, to receive so many documents with attachments clearly omitted and with so much of the information electronically deleted, which was against—

Mr. Bob Delaney: Chair—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order.

Mr. Bob Delaney: I do have to come in with a point of order here. The witness is being asked about—

Mr. Jim McDonell: The practice of—

Mr. Bob Delaney: —the practice of whatever it is on documents that he didn't create and that were submitted before he joined the Ministry of Energy. I would also note that the PCs called Mr. Livingston and had a chance to ask him questions.

Mr. Jim McDonell: I'm asking about a point of information—

The Chair (Mr. Shafiq Qaadri): Thank you. He's allowed to answer the question as he sees fit. Please proceed.

Mr. Andrew Teliszewsky: Sorry, could you repeat your question?

Mr. Jim McDonell: What I'm asking about is the discussion beforehand, where you were asked about deleting information in these documents because they were commercially sensitive and may affect negotiations, where that was a practice of the documents we saw. But that was clearly against the instructions of the Speaker, who said that previous examples had shown that that was not a reason for any deletion of information, that the Legislature should have access to all information. But clearly we saw documents with information redacted. I'm just asking for the—

Mr. Andrew Teliszewsky: So in response to the estimates committee motion?

Mr. Jim McDonell: Yes. I mean, was that the direction? Or do you see that as—that that direction was given out to actually hold information back from the Legislature?

Mr. Andrew Teliszewsky: The estimates committee motion was something that the Ministry of Energy was coping with in advance of my time there, and so I don't think I could speak to that in and of itself. As per my testimony earlier, in response to this committee and what our office has done to be able to come into compliance with the various motions that have been voted on, we've relied on the support of cabinet office and ministry legal, as well as an outside legal firm, to support that process so that the information can come to members of this committee in a format both redacted and unredacted for your use and review.

Mr. Jim McDonell: I'm fine.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. McDonnell. To Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. Teliszewsky, the plants that have been moved to Napanee and to Sarnia: Will they be making power that is surplus to Ontario's needs?

Mr. Andrew Teliszewsky: I think the best folks to answer that would be the Ontario Power Authority, in terms of when that power would be coming into service. I believe there has been some discussion between the OPA and in fact the Auditor General in the various reports vis-à-vis what the in-service date would be for those various plants. As you adjust the in-service date, then you certainly have an impact on what the SBG—the surplus baseload generation—would be at that particular point in time.

Mr. Peter Tabuns: That long-term energy plan in front of you: I'm assuming that as chief of staff to the Minister of Energy you were deeply involved in its preparation. Is that a correct assumption?

Mr. Andrew Teliszewsky: I would have been involved in the preparation of the ministry's long-term energy plan, certainly.

Mr. Peter Tabuns: So you're aware of the direction that demand is headed in Ontario in the next four to five years?

Mr. Andrew Teliszewsky: We rely on the Ontario Power Authority as well as the Ministry of Energy to present us with those forecasts. The minister's office does not have the ability to make those projections on its own.

Mr. Peter Tabuns: Correct. So is demand for power in the next four years going up, down, or staying flat?

Mr. Andrew Teliszewsky: With regard to demand, again, I would refer you to the Ontario Power Authority for a specific discussion in this regard. But demand is something that will fluctuate. It is something that is estimated going forward. Demand certainly is also temporal, so demand did rise in the winter months here this past January vis-à-vis the temperature that many Ontarians were facing. So demand goes up and down. Projections come from the Ontario Power Authority.

Mr. Peter Tabuns: Have you looked at their projections?

Mr. Andrew Teliszewsky: We have received briefings with regard to the projections of the expected demand.

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Mr. Peter Tabuns: So are they telling you that demand is going up, down, or staying flat for the next four years?

Mr. Andrew Teliszewsky: Demand is uncertain, so the information that we receive from the Ontario Power Authority speaks to a range of uncertainty that will come in the future. It is anticipated that demand will go up, perhaps not at the slope of that curve. It may not be as steep as what Ontarians experienced in the past. Certainly, as you go further out into the out-years, there is a range of uncertainty in that regard.

Mr. Peter Tabuns: So you don't know whether these plants will be surplus to Ontario's needs or not? That's what you're saying to me?

Mr. Andrew Teliszewsky: Again, the in-service date of those plants plus what the demand would be at that particular moment in time would be what would determine whether or not they would be surplus. The natural gas fleet in Ontario is very much at peak—the natural gas fleet is not the baseload power. The natural gas plants in Ontario are turned on as load rises throughout the day. Your natural gas plant is not firing 24/7; typically, it's your nuclear generation that is firing 24/7, and then, as load rises throughout the day—we wake up, we turn on our appliances, we go about our daily lives—the demands that Ontarians have on the system increase. So it would be in that middle chunk of the day, between 10 and, say, about 4, that the power from any of our natural gas plants would be used.

Mr. Peter Tabuns: You know, you're the chief of staff to the Minister of Energy. Will these plants be needed or will they be surplus when they come on?

Mr. Andrew Teliszewsky: I've done my best to answer your question. We rely on—

Mr. Peter Tabuns: I know you rely on others to give you numbers. I don't have any doubt about that. What do they tell you?

Mr. Andrew Teliszewsky: That in fact, in the time period when Ontario will refurbish its nuclear fleet, we will require replacement generation. If you take a look at the timeline published in Ontario's Long-Term Energy Plan of the time period by which we would start the refurbishment of the nuclear fleet and the time period within which these natural gas plants would come into service, then it would generally correlate.

Again, I would rely on the expertise of the Ontario Power Authority and the Ministry of Energy, but I think that when you line up those factors, these plants would ultimately serve the purposes of Ontarians. But again, I would refer you to the testimony I just gave about the way in which the natural gas fleet is used.

Mr. Peter Tabuns: I understand how the natural gas fleet is used.

I'm just going to go back to a piece I missed; unfortunately, I had to go up to the chamber. You were chief of staff to David Livingston when he was head of Infrastructure Ontario?

Mr. Andrew Teliszewsky: I was chief of staff to Minister Chiarelli.

Mr. Peter Tabuns: You weren't working for—I see.

Mr. Andrew Teliszewsky: Okay. I was at the minister's office, at the Ministry of Infrastructure and Ministry of Transportation. Infrastructure Ontario is an agency of the Ministry of Infrastructure, similar to the fact that the OPA is an agency of the Ministry of Energy and Metro-linx an agency of the Ministry of Transportation.

These agencies are set up to be nimble and bring their particular expertise to the engagements that they are tasked with. As I was explaining earlier to the opposition question, the relationship between Infrastructure Ontario and the government perhaps might be unique across government but is actually one that I would suggest works well. Infrastructure Ontario is tasked with—

Mr. Peter Tabuns: That's okay. Did you interact with Mr. Livingston when he was head of Infrastructure Ontario and you were in the minister's office?

Mr. Andrew Teliszewsky: Yes, I would interact with the CEO of Infrastructure Ontario as the chief of staff to the Minister of Infrastructure, but as it relates to the work of the Ministry of Infrastructure or the Ministry of Transportation. As their work related to any other portfolio, in this instance, the Ministry of Energy, I would not have had reason to discuss their work with another ministry specifically for the reasons of commercial sensitivity that have come before this committee in the past. It would not have been within the purview of myself as chief of staff to the then Minister of Infrastructure to get into the weeds on the work that Infrastructure Ontario was doing for another ministry.

Mr. Peter Tabuns: So you didn't have any discussions with Mr. Livingston in his temporary role working for the Ministry of Energy or the Premier's office on the negotiations around Oakville; is that correct?

Mr. Andrew Teliszewsky: I would not have had reason to have conversations with Mr. Livingston in this regard.

Mr. Peter Tabuns: And you didn't have conversations with him; is that correct?

Mr. Andrew Teliszewsky: To the best of my recollection, I did not have conversations with Mr. Livingston in this regard.

Mr. Peter Tabuns: What interest rate were we paying for infrastructure projects in the 2009-2010-2011 period?

Mr. Andrew Teliszewsky: Interest rate of which?

Mr. Peter Tabuns: Interest rates for capital works.

Mr. Andrew Teliszewsky: You'd have to inquire with the Ministry of Infrastructure or Infrastructure Ontario. You're referencing the interest rate that they would receive—

Mr. Peter Tabuns: That as a province, we would have been paying for large infrastructure projects managed by IO in those years.

Mr. Andrew Teliszewsky: IO manages the procurement of that infrastructure. They run a RFQ, RFP, and that is then done. It's a public-private partnership. It is one where the government retains ownership of the asset. So in many instances, when Infrastructure Ontario is engaged in, say, a capital buildout, then that occurs—if you're building a hospital with the Ministry of Health and it's done by Ministry of Health—

Mr. Peter Tabuns: What were the interest rates that were common on projects at the time?

Mr. Andrew Teliszewsky: Those interest rates would have been provincial borrowing interest rates, if it was a capital buildout.

Mr. Peter Tabuns: And what was provincial borrowing at the time?

Mr. Andrew Teliszewsky: I'd have to refer you to the Ministry of Finance or the Ontario Financing Authority.

Mr. Peter Tabuns: Was it 14%, by any chance?

Mr. Andrew Teliszewsky: I would only be speculating. I'm sorry.

Mr. Peter Tabuns: The numbers that your minister first gave Mr. Chiarelli when he became Minister of Energy for the cost of the Oakville plant—when did you first learn that the \$40-million figure was not an accurate number for the cost of the Oakville plant's relocation?

Mr. Andrew Teliszewsky: I believe the \$40-million figure has actually reappeared in the auditor's special report as an accurate description of—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. To the government side, Mr. Delaney.

Mr. Andrew Teliszewsky: —the taxpayer costs.

Mr. Bob Delaney: Thank you very much, Chair. Andrew, is it fair to say that right now Ontario is able to supply its demand for electricity, both base and peak, from sources within Ontario?

Mr. Andrew Teliszewsky: Ontario is electricity independent at this moment in time, yes.

Mr. Bob Delaney: How many gas plants have been built since—well, since you've been in government, that have been located in willing host communities and are now supplying power to families and businesses all across Ontario?

Mr. Andrew Teliszewsky: I believe that's been testified in the past. I don't want to misspeak. I think there's an 18-gas-plant figure, but I could be incorrect in that regard. Again, not having been at the Ministry of Energy during those procurements, I can't speak to that.

Mr. Bob Delaney: Okay. So let's ask you to be speculative. When's the next major windstorm going to topple the power line?

Mr. Andrew Teliszewsky: We don't know what Mother Nature will bring us.

Mr. Bob Delaney: Okay. When is the next, hitherto-unforeseen equipment failure going to bring a power station offline?

Mr. Andrew Teliszewsky: Again, those things we can't predict.

Mr. Bob Delaney: Is it reasonable, then, to say that as the chief of staff in the Ministry of Energy a lot of your

effort is to be able to supply clean, reliable, affordable electricity and to supply it from a diverse series of sources to be able to meet baseload and peak generation on any given day, regardless of such circumstances?

Mr. Andrew Teliszewsky: We do our best working with the agencies and the ministry in that regard, yes.

Mr. Bob Delaney: Okay. From your experience in working with the Ministry of Energy, are there any other observations you'd like to make on siting processes that might be valuable to this committee going forward?

Mr. Andrew Teliszewsky: I think that this committee's had the benefit of hours of testimony from experts in this regard. The government itself has benefited significantly from the work of IESO and OPA with regard to their recommendations on siting. That was a report that was commissioned by our government and that was accepted ultimately by the Premier and minister—accepting their 18 recommendations with regard to siting, with regard to specifically community engagement. Our government has done a lot to turn the page in terms of having a discussion early with municipalities about energy infrastructure needs. I think ultimately this is a question of both rights and responsibilities, where communities who do need to be engaged in these discussions have a right to be engaged early. They certainly have a responsibility to engage in that planning process. It's incumbent upon us across all levels, provincial and municipal, to engage in these honest conversations about the energy and electricity needs of the province and to move forward accordingly.

Mr. Bob Delaney: Thank you very much for your time today.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thanks to you, Mr. Teliszewsky, for your presentation and testimony. We have a subcommittee meeting. You're officially dismissed; thank you.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): A subcommittee report: Mr. Del Duca?

Mr. Bob Delaney: Five-minute recess, please?

The Chair (Mr. Shafiq Qaadri): Five-minute recess? Yes.

The committee recessed from 1621 to 1624.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The committee is back in session.

Mr. Del Duca, you're going to read our subcommittee report?

Mr. Steven Del Duca: Sure. The report of the subcommittee:

Your subcommittee on committee business met on Thursday, December 12, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013, and recommends the following regarding the summary of testimony:

(1) That the research officer and the table research Clerk provide a summary of testimony of witnesses from

October 11, 2013, to December 10, 2013, by Tuesday, February 18, 2014.

(2) That the summary of testimony be broken down by witnesses, as follows:

(a) a summary of testimony respecting the tendering, planning, commissioning, cancellation and relocation of the Mississauga and/or Oakville gas plants; and

(b) a summary of testimony respecting the Speaker's finding of a prima facie case of privilege.

I move that the subcommittee report be adopted.

Ms. Lisa MacLeod: I have to second that.

The Chair (Mr. Shafiq Qaadri): Thank you. Is there any discussion before the premature seconding?

Ms. Lisa MacLeod: I call the vote.

The Chair (Mr. Shafiq Qaadri): Fair enough. We'll assume that the subcommittee report is adopted as read.

All those in favour? All those opposed? I believe that's unanimous.

Ms. Lisa MacLeod: And they say we can't get along here at Queen's Park—

The Chair (Mr. Shafiq Qaadri): The full committee is now adjourned.

The committee adjourned at 1626.

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Official Report of Debates (Hansard)

Tuesday 25 February 2014

Journal des débats (Hansard)

Mardi 25 février 2014

Standing Committee on Justice Policy

Members' privileges

Comité permanent de la justice

Privilèges des députés



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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 25 February 2014

Mardi 25 février 2014

The committee met at 0831 in committee room 2.

MEMBERS' PRIVILEGES

The Vice-Chair (Mr. Phil McNeely): The Standing Committee on Justice Policy is now in session. Good morning to everyone. Welcome to the standing committee.

One of the first things to check out: The witness seeks approval to use PowerPoint. Everybody in favour? Thank you.

DR. MARK WINFIELD

The Vice-Chair (Mr. Phil McNeely): The witness this morning is Mark Winfield, associate professor, faculty of environmental studies, York University. The government will start off the questioning. The questioning will be 20 minutes a round.

Mr. Winfield will have five minutes for an opening statement, and I believe we can start with that. The witness will be affirmed by the Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Dr. Mark Winfield: I do.

The Vice-Chair (Mr. Phil McNeely): You may start your five-minute opening statement.

Dr. Mark Winfield: Great. Thank you. Thank you for inviting me here today.

As the Chair said, my name is Mark Winfield. I'm an associate professor of environmental studies at York University, and I also co-chair something called the Sustainable Energy Initiative at the university, which is our effort to consolidate our teaching, research and partnership activities around sustainable energy issues.

I'm the author of various reports, book chapters, academic articles, op-eds and blogs on Ontario electricity, energy, climate change and environmental policy. I understand that a couple of the blogs and op-eds were provided to the committee that were specifically relevant to the issues before you, particularly my commentary on the implications of the gas plant scandal for system planning, and also my comments on the long-term electricity plan review.

There are a couple of articles that I may send along the PDFs for to the Clerk, which might be of interest to members and to legislative research. One dealt with the implications of sustainability assessment for electricity system planning, and the other dealt with some of the controversies around the renewable energy approval process in Ontario, and some thoughts about that.

Finally, I sent along a draft of a book chapter which talked about how the concepts around electricity system planning have evolved in Ontario over the past century. I'm also the author of a book entitled *Blue-Green Province: The Environment and the Political Economy of Ontario*, that deals with electricity issues in some depth, up to the 2011 election.

I have to emphasize that I have no material knowledge of the decision-making behind the gas plant cancellations beyond what has been reported in the media and in the Auditor General's report. I understand I'm here as a contextual witness and to provide input in the committee's deliberations, particularly in the formulation of recommendations around future approaches to system planning and facility siting.

In my view, the gas plant situation reflects some much deeper problems than arguably poor facility siting on the part of the OPA. I think there's a host of growing challenges to traditional approaches to electricity system planning. The cancellations of the gas plants in a sense are kind of a manifestation of the need to manage the consequences of these problems in the planning process at the political level.

We have to recall we set up the Ontario Power Authority now a decade ago to develop plans for the system. It ultimately would develop two such plans, of which the Oakville and Mississauga plants were part. But in both cases, those plans were overtaken by events before they could be reviewed by the Ontario Energy Board: major declines to the province's electricity needs; the move towards renewable energy through the Green Energy and Green Economy Act; a growing recognition that the OPA had initially massively underestimated the cost and the potential cost overruns, in the sense of delays associated with building and refurbishing nuclear power plants; and we've also had this question of local objections to specific facility sitings, of which the Oakville and Mississauga cases are sort of textbook, but there are lots of others around renewable facilities as well.

All of this in my mind sort of emphasizes the extent of the degree of uncertainty the province is now facing

about its future energy needs. The fact that the province's economy is restructuring away from the traditional manufacturing and resource-processing base and towards service and knowledge-based sectors means that we have a great deal more uncertainty about the future direction of demand. It used to be we consumed; demand would rise. Now we're in a situation where demand is falling and is projected at best to be a flat line. And there are also major technological innovations occurring very, very quickly around energy conservation: grid management, which is broadly captured in the term "smart grids," energy storage and renewable energy technologies, which again are sort of changing fundamental assumptions around which planning has been constructed.

The government's initial response, as I saw it, was embodied in Bill 75, which died on the order paper, which would have effectively gotten rid of the OPA's planning mandate and really sort of managed the system through ministerial directives. I must admit some concern about this approach—

The Vice-Chair (Mr. Phil McNeely): You have 15 seconds left.

Dr. Mark Winfield: Okay, I'll wrap on that. We need a much more flexible and adaptive planning framework and one that works on shorter time frames, but we do need a planning framework of some sort.

I'll leave it at that, and we'll unpackage the rest in question and answer. Thank you.

Mr. Bob Delaney: Well, thank you for that very interesting introduction, Mr. Winfield—

The Vice-Chair (Mr. Phil McNeely): I'd just like to say, Bob Delaney, that you have 20 minutes.

Mr. Bob Delaney: Okay. Thank you.

Interjection.

Mr. Bob Delaney: Or I could just jump right in.

Ms. Lisa MacLeod: Or we get to have a point of order on this.

Mr. Bob Delaney: Well, start any time you want.

Mr. John Yakubuski: I think it's important to let the Chair identify who is—

Mr. Bob Delaney: All right.

Interjection.

Mr. Bob Delaney: I see it's going to be a great morning. Thank you, Chair.

Thank you for coming here, Mr. Winfield, and for taking the time to come and see us. As you know and as you mentioned in your opening remarks, part of the mandate of the committee is to provide recommendations on how to improve the siting and the process for large-scale energy projects.

I wonder if you could start by telling us a little bit about your academic work in the field of energy.

Dr. Mark Winfield: I'm the author of a number of articles, book chapters—a couple of which are still in press—blogs and other contributions around energy policy in general, and more specifically around electricity policy in Ontario. I've focused more on the system-planning-level questions and how that planning process has unfolded. We've looked in particular—and I think I

sent around as one of the PDFs an article that was published in the journal *Energy Policy* which is a big international energy policy journal, which was essentially a summary of the contribution that I and colleagues at the University of Waterloo made to the Ontario Energy Board's original review of the original integrated power system plan in 2007-08.

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The way that process worked out is that the energy board hearing was cancelled before we actually managed to testify, but that paper in particular is our kind of core reflection on the implications of sustainability and sustainability assessment for energy system planning. This, in part, flowed from the government's requirement that the Ontario Power Authority demonstrate a considered sustainability in system planning.

We never actually got to test that requirement because the energy board never got to conclude on the first IPSP. But in a sense that fed in some ways into the more general critique that we provided in the paper, which again goes back to—and much of my work focuses on this question of the issue of uncertainty and the extent to which the assumptions on planning that have traditionally occurred seem to be—perhaps “collapsing” is not too strong a word to describe it. The government and the OPA, in effect—and this is not unique to Ontario. This is happening in US states. It's happening in western Europe as well. System planners and managers are now trying to figure out, “How do we cope with planning this sort of infrastructure when the assumptions on which we have traditionally operated aren't holding anymore?”

Mr. Bob Delaney: You mentioned in your opening remarks that—I'll use your words—you have “no material knowledge” of the gas plant relocation. Just for perspective, are you a P. Eng. or do you have a science background?

Dr. Mark Winfield: No. My actual background is that I have a PhD from the University of Toronto in political science, so I'm not an engineer. I'm a policy person.

Mr. Bob Delaney: Have you worked in the energy field for any of the power companies in—

Dr. Mark Winfield: No, no. Prior to becoming an academic, I was a policy director with a non-governmental organization called the Pembina Institute. I was the Ontario policy director and we actually undertook a number of studies on the Ontario electricity system at that stage. Prior to that, I was director of research with the Canadian Institute for Environmental Law and Policy.

Mr. Bob Delaney: So then, within your scope of knowledge and expertise, could you talk a little bit about how Ontario's current system of power generation and transmission would compare to the system we had in the past, for example, when you and I were growing up?

Dr. Mark Winfield: I think there are some significant changes, the most obvious one, of course, being the phase-out of coal-fired electricity. That is the most obvious difference in the supply mix. The other major shift that has been happening has been the increasing

introduction of renewable energy sources. We've gone basically from a standing start: As of 2003-04, I think there was about 150 megawatts installed, and we're now running somewhere in the neighbourhood of around 1,700 megawatts installed, principally of wind, a lesser amount of solar.

That said, certain other things—and there is also a renewed focus on conservation, which again was picked up in the early part of the last decade after a long period in which we didn't pay much attention to conservation. That part is playing out, although it's harder to actually document the exact impact of the conservation side on demand, given that we also know that there are structural reasons why electricity demand is declining.

The one thing that hasn't changed is that the system remains about 50% nuclear. In fact, it's been drifting quietly upwards, closer to 60% recently. That remains a source of concern on my part, given that the technology suffers from certain inflexibilities. It suffers from what those of us who study energy policy refer to as "high-path dependence," which more colloquially means lock-in effects, that once you've made a decision that you're going down that path, you're kind of stuck with it for 70 or 80 years, regardless of how the universe outside might change.

So there are some very significant changes, particularly in what are sometimes referred to as the marginal resources, but there's also a certain degree of sameness as well about certain core elements of the system, which in my view have tended to be more the drivers of the conceptualization of the planning process.

Mr. Bob Delaney: Let's come back to a comment you made regarding coal-fired generation, which, as you accurately noted, Ontario has moved away from. How reliant on coal had Ontario been prior to the move to more diversified and cleaner sources of energy?

Dr. Mark Winfield: At the peak, which was at the height of something called the nuclear asset optimization plan, which occurred in the late 1990s when we took the seven oldest nuclear units out of service for refurbishment, coal was providing somewhere in the neighbourhood of 25% of the system capacity.

Mr. Bob Delaney: Did you follow, as the events occurred, the cancellation of the proposed gas-fired peak power generation plants in Mississauga and Oakville?

Dr. Mark Winfield: Not in excruciating detail, I guess, is the way I would put it. I sort of observed these events occurring. I looked at it more from the perspective of system planning and what the implications were.

There are two dimensions. There's the location-specific facility fight, if you like, the sort of classical—what sometimes gets referred to as "locally unwanted land use," a LULU in planning speak. There was that dimension to it and the question of how the OPA had approached the siting questions and how the environmental assessment process had worked in relation to these facilities, or not worked. So there's that level of question.

Then the other part that I must admit I spent most of my time thinking about was that what we're not recog-

nizing here, perhaps, is there's a fairly major policy choice being made here about technologies. The fact that demand is not turning out to be as much as we thought it would be for a range of different reasons, some of them related to conservation, some of them related to structural change in the economy, meant that we didn't need as much generation as we had thought we did when the OPA wrote the original integrated power system plan.

The government was in effect making a choice. It could make a choice at that stage of, "We could have less nuclear, or we could have less gas, or we could have less something else." What happened that concerned me most is I looked at it from a system level: "We're making a very quick decision that we'll live with less gas." We could have lived without a nuclear refurbishment instead. There are different economic and environmental consequences that went with those choices.

So that was the level at which I followed it. I did not follow the details of the decision-making and what unfolded subsequently. I was more concerned about, "What does this mean in terms of how we are approaching system-level planning? Why are we having an event like this happen?" which effectively implies that something has gone wrong in the planning process, and we're now getting political interventions to try to correct that problem.

Mr. Bob Delaney: Were you aware, at the time that the Ministry of Energy then put out the call for proposals, that both sites had been zoned industrial and in the case of Mississauga zoned industrial/power plant? In other words, both sites had been zoned specifically for that type of development. In the case of the city of Mississauga, the city of Mississauga specifically granted a building permit as far back as 2005.

Dr. Mark Winfield: I did not follow the siting process to that level of detail. What I was more interested in at that stage—it's more the question of the social conflict that occurred. I mean, you sort of have two things going on. You do have a formal, textbook approval process unfolding, but then you also had this fairly intense political conflict that then happened, particularly in Oakville, when the town did start making quite significant moves using its municipal planning authority to try to block the plant and—

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Mr. Bob Delaney: So let's talk about that just a little bit, then. At the moment, if you're a municipality anywhere in Ontario, while you have to plan for such things as waste removal, water and sewer, and a host of other things, one of the things you don't have to plan for, especially if you're building a new subdivision, is how to get electricity in there.

Could you talk to me, in terms of the siting process, about some of the things that in your opinion municipalities might have to consider, looking forward, to integrate planning for electricity into such things as new developments, intensification, rezoning and other things that would affect the use of land?

Dr. Mark Winfield: I think one of the issues that surfaced here has been that the land use planning

universe and the energy universe have not actually been terribly connected in Ontario, that energy has not been a lens through which planners look at the universe. At the same time, the energy world was sort of a universe unto itself as well. The LDCs did their thing, but there was very, very little crossover between the two.

That was, I think, partially that we didn't pay much attention for a long period of time. For nearly 30 years, we didn't actually site energy facilities in Ontario, because after we had basically made the decision around Darlington in the late 1970s, we really didn't do any new major facilities until the early part of the last decade, when we realized 80% of the assets were starting to reach end of life and we were going to have to start locating new facilities. It was at that stage that suddenly we began to realize we were going to have to have a conversation with the planning universe. That conversation really only got as far as some provisions in the provincial policy statement to the planners that said you've got to accommodate energy facilities, but it never evolved further than that.

Now, more recently, the government has raised this question of both regional energy planning and also what's referred to as municipal energy plans or community energy planning, which I think is very welcome and is drawing some attention in the planning world to the energy dimension of things. But we're still at a relatively early stage of that process. I mean, this was all relatively new. The province or its agencies had not been in the business of trying to locate large energy infrastructure for a long time, and municipalities had not been presented with the possibility of needing to accommodate that kind of infrastructure—sort of a greenfield tabula rasa, as it were—for a very long time as well.

Mr. Bob Delaney: To add to that, in the past that you and I have been discussing, as you've pointed out a few times, those were large and centralized energy production projects, and today, every jurisdiction in the world is looking at the same type of decentralized power grid as they have in their information technology grid. For example, there are no central data repositories in the Internet; it's very widely dispersed. Power generation and transmission have been moving in much the same direction.

You accurately point out that for nearly a generation, Ontario had not really engaged, you point out that municipalities had no clearly defined role, and, as such, we were in an area where there wasn't a lot of definition on what role communities should play, what role municipal councils should play, and how both of them should interact with a regulatory authority like the OPA and with the government of the province.

Let's move on to some of the role that perhaps public consultations could play in the siting of energy infrastructure. Could you talk to me a little bit about how municipalities and communities should not merely get engaged when a project is proposed but get engaged in terms of thinking about where energy infrastructure within their county, their city or their region should be?

Dr. Mark Winfield: I think what has been happening is that municipalities have in some cases been moving in those directions. I think you're seeing that in the case of the city of Guelph, for example. There have been some very interesting things going on in the city of Toronto as well recently under this sort of general rubric of what's termed "community energy planning," which is an attempt to integrate the energy piece and the land use planning and infrastructure pieces.

This has been in Ontario, until very recently, a very bottom-up kind of exercise, where it has been individual municipalities who have been doing most of the intellectual work and the heavy lifting to move that forward. We're beginning to get indications of a more supportive response from the province. The province initially was fairly passive about this and is now engaging a bit more in the community energy planning piece.

I think the complications which have not been fully thought through yet are that the municipalities that are engaged in community energy planning exercises are tending to look at it from an energy security perspective and from a self-sufficiency kind of perspective. We haven't really crossed the question of where does what the municipalities do in terms of their community-level energy planning exercises—how does that cross over with the provincial-level infrastructure planning exercises? That's the unknown territory.

We had a bit of a glimpse of this. There was a bit of a dispute between the OPA and Guelph over that level of interaction, so we're at an early stage that way. So that part is sort of resolving this question of, "How do we deal with the provincial-level infrastructure that has to go somewhere?"

I think we're still trying to sort that out, because we didn't really have a very clearly defined process. The OPA and others have pointed out that they made siting decisions based almost entirely on technical and grid considerations and didn't really consider the interactions with the host communities very much. So we're in a stage of having to invent or reinvent processes to deal with that set of interactions. We're not there yet.

Mr. Bob Delaney: Okay. Thanks, Chair. I'm going to stop there for this round.

The Vice-Chair (Mr. Phil McNeely): We'll now go to the opposition and to Ms. MacLeod.

Ms. Lisa MacLeod: Sure. I may split my time with my colleagues, but I do have some questions for you, Professor Winfield. I appreciate you taking the time to join us here today.

I know my colleague Mr. Delaney had asked a few questions that I think I would have asked just in context of who you are and what brought you here, those sorts of things. I think I'm satisfied with your responses with respect to that.

What I'd like to jump right into is an article that you wrote in my hometown newspaper, the Ottawa Citizen, on May 14, 2013. It was entitled, "Gas Plant Fiasco Is Just the Beginning: Ontario's Liberal Government Stands to Waste a Lot More Money If It Doesn't Change Its

Approach to Energy Policy.” You’ll probably appreciate that I’ll agree wholeheartedly with that statement.

In the last paragraph of that article, you had been talking about a piece of legislation the McGuinty government had left on the table before prorogation with respect to planning. You talked a little bit about Kathleen Wynne coming on board as the Liberal leader. You make a statement in there: “Premier Wynne’s government needs to inject reason and accountability into the energy system planning process.”

This article is almost a year old. Is it, in your opinion, within that last year, that they have, in the Liberal Party, injected “reason and accountability into the energy system planning process”?

Dr. Mark Winfield: It’s a complicated question. I think, in some ways—

Ms. Lisa MacLeod: You can just say no if you want to.

Dr. Mark Winfield: I think, though, that this is a matter where there are shades of grey. I think that there are certain things that the government has moved on in some ways, the regional planning question and the municipal energy planning things being good examples of that.

There was considerable consultation around the revised long-term energy plan. The parts that continue to concern me are, one, that to some degree, the basic planning paradigm that we’ve been following that the OPA started with back in 2004-05 is still basically in place. So I think the vulnerability to changing circumstances and assumptions not turning out to be what we thought they would be is still there. We haven’t really come up with a planning paradigm that is sufficiently flexible and adaptive to deal with the fact that, as Mr. Drummond said, we’re dealing with a cone of uncertainty that gets larger the further we go out. So that’s one dimension.

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The second dimension that causes me concern is that we’re not sure how the process around this new long-term energy plan is going to play out. If you recall, the original process in the Electricity Restructuring Act of 2004 said that the OPA is to develop a plan. It’s to go to the energy board. The energy board is to review the plan and it’s to make a decision about whether to approve it or not, and then we can move into implementation. The way it played out, we had about two weeks of hearings before the energy board in 2008, and then the plan was withdrawn, partially because circumstances were already changing and assumptions were falling apart.

My concern is that since then, the OPA wrote a second integrated power system plan. It never went to the energy board. We’ve now got the long-term energy plan on the table. We don’t know if we’re going to see an actual integrated power system plan and, most importantly, we don’t know if that’s going to go to the energy board or what, in terms of some sort of external review, where the assumptions the OPA has made can be challenged by

experts and the energy board can make decisions about, were those assumptions valid or not?

This is the part that worries me increasingly: I’m unsure if the government seems to be sort of pursuing where Bill 75 was taking us without having actually finished the legislative part of the exercise. I’m also on the record as having said that I think where they were going with Bill 75 was a mistake, that we need the rigour of the energy board review for these big infrastructure decisions. Are they cost-effective? Are they prudent? Do they advance environmental sustainability, which is again one of the regulatory requirements that was in the process? We need the energy board process to precisely guard us against these risks of uncertain assumptions about need, about costs, about those sorts of things.

That’s my somewhat more complicated answer to your question, that there’s some cause for concern because it’s not clear, at the provincial-level planning process, how this is actually supposed to work, and where do we get the external review of the assumptions, particularly on the big infrastructure investments, the big path-dependent ones that we’re going to be stuck with for a long time? Where do we get to have that conversation in front of a real regulator, where the assumptions get examined? When does that happen in this process? At this stage, we don’t seem to have a clear answer to that question.

Ms. Lisa MacLeod: So you don’t think that the LTEP has addressed those issues?

Dr. Mark Winfield: No, the LTEP is a statement of policy. Again the problem is—it was subject to consultation, but that’s very different from it being put in front of a regulator that has a mandate to look at it from a viewpoint of environmental sustainability, cost-effectiveness and prudence, before which both the OPA has to present its evidence and, crucially, third-party interveners have the opportunity to examine the evidence, to challenge it, to cross-examine the OPA’s witnesses and say, “What were your assumptions here?” and indeed to introduce evidence of their own which may contradict, which may challenge assumptions, and to have the energy board make the decision about, are these valid assumptions or not? That part is not happening, and we’re waiting to see it.

Ms. Lisa MacLeod: Are you still concerned that there could be politicization in future siting, whether it’s a gas plant or it’s a wind turbine development?

Dr. Mark Winfield: Well, on the gas plants we’re mostly, so far as we know, through the siting saga. There are 21 plants; 19 of them are running. We have these two that—actually, there were three that got more complicated. I’m less concerned about the politicization of siting, because the siting is now relatively bottom-up. It’s sort of the big piece of siting which is still playing out somewhat. Even that is somewhat resolved around the renewable side, where you’ve got a lot of wind facilities in particular which are contracted under the FIT program and which are still to be constructed and rolled out over the next couple of years.

I'm more concerned about the fact that the planning paradigm in which we're operating is still what we term political management: the government's way of responding to this problem of uncertainty and the apparent inability of the OPA to write a plan that can survive two or three years of changing circumstances. It also can kind of throw up its hands and say, "We can't make the planning work. We'll deal with this through relatively short-term management through the instrument of the ministerial directives." I can understand the appeal, but I also think it probably doesn't serve us well in the longer term. We need a planning framework because we are making big, long-lived infrastructure decisions. We need a process for testing the assumptions that underlie those decisions before we lock them in and for thinking about, "Do we have alternatives?" or different ways we can meet these needs.

That's the piece that we're missing. The government's current approach, to date, and I emphasize that—we don't know for sure, but I'm not seeing any signal that would suggest that anything flowing from the long-term energy plan is intended to go to the energy board for some sort of a review in terms of, does this all make sense? We know there are a number of big choices there about nuclear, imports from Quebec, about other things, about how much conservation is possible.

The demand forecast, which is in a sense the core of a planning exercise, remains, I think, an area of considerable uncertainty and where I think it would be helpful to have more expert reflection on where electricity demand is going in this province because that's what we make investments based on.

Ms. Lisa MacLeod: Yes, that was interesting. At the top of that answer, you talked about political management, and you said, "Can a plan survive three to five years?" and that we needed a planning framework. That's consistent, I think, with your article in May 2013.

You wrote at the time, "The gas plant situation reflects much deeper problems than arguably poor facility siting decisions. Rather, the situation represents the culmination of an increasingly explicit politicization of decision-making about the province's electricity system over the past decade." That's your quote.

Dr. Mark Winfield: Right.

Ms. Lisa MacLeod: As somebody who has obviously followed this gas plant fiasco and as somebody who has a wind turbine development slated for her community, I certainly have seen the politicization of it. I'm just wondering if you might want to elaborate a little bit more on the politicization of the electricity system here in Ontario over the past couple of years.

Dr. Mark Winfield: Again, context is important. There is an argument that it was ever thus, going back to the time of Sir Adam Beck, and that in some ways it was simply more subtle. Since 2004—and one has to contextualize that very carefully, that the government, at that stage, was dealing with the fallout from the experiment with a purely market-based system, which didn't work out very well. There was a perception of crisis at that

stage of the game. There was an attempt to reintroduce some measure of rationality. The OPA was created for the purpose of reintroducing a planning framework of some sort.

The problem has been that there was a need to manage things in the shorter term as well, and that led to the directive power in the Electricity Act. As things evolved, the OPA's ability to plan in a way that was perceived as having legitimacy and therefore political resilience—when the OPA came up with the plan, people agreed this was a reasonable plan—was a problem. Then there was this problem that when the OPA came up with plans, they kept being overtaken by events: that demand wasn't going up, but it was going down; that nuclear wasn't costing us six cents a kilowatt hour, but it was costing us an awful lot more to refurbish plants. Indeed the bleed is still open in some cases.

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And then there were these political—these sort of social conflicts at a local level around facility siting. What you've got in response is interventions from the political level to sort of fight the perceived fires; I remember one Minister of Energy described it to me as a kind of a "whack a mole" situation. But what's happening there is, it is effectively a kind of management response. It's an attempt to manage adaptively to the situation because the planning process isn't working very well.

That would be my take: You're getting social conflicts, you're getting problems, the need for political-level interventions, because the planning process isn't working very well.

Ms. Lisa MacLeod: Would you agree, though, Professor, that it isn't just in the siting of gas plants, that it's in the siting of most of our energy plants that there needs to be a better process, whether that's nuclear, wind turbine or solar panels? I think hydroelectric has already been around for many, many years and that's a bit of a different situation. But wouldn't you say that the planning process for the OPA needs to be less political and needs to have a more firm process in place?

Dr. Mark Winfield: Well, what happened in part was—and it goes back to my answer to Mr. Delaney's question. Part of it was that we hadn't actually tried to site any energy infrastructure in this province for nearly 30 years, from about the late 1970s. Even on the transmission and grid side, the basic locations were determined and we were doing some maintenance and upgrades, but we weren't actually trying to locate new facilities somewhere.

So when the OPA first started these exercises, it tended to look at the facility-siting question—and they admit this in the little paper they provided on the regional energy planning—very much through a technical and a grid-type question, a very pure kind of engineering view of the universe, that this is where you should put the gas plant and we don't really care that there's a whole bunch of other land uses in that location and that there may be social conflicts. That approach to things has led, in some cases, to quite significant social conflict.

I think there were two problems with that. One was that because the macro-level plan had never been subject to any sort of real review and approval, communities saw facilities sort of landing from outer space in their backyards in a way which was unusual and they had not seen for 30 years in Ontario.

Ms. Lisa MacLeod: It's consistent with Bob's application—

Dr. Mark Winfield: But that's part of it. Communities are being presented with these decontextualized "Why are you putting a gas plant in our backyard?" kinds of thing—or wind turbine. And then, too, the actual process itself was very top-down. It did not necessarily involve a lot of conversations with the municipality or the community about why we're here or whether you want us here.

So you had those two components playing out. Where that lands is, in some cases, in quite intense social conflicts, the technical term academics use to describe people with signs saying, "No gas plant in our backyard." And at some point in a democratic society, that is likely to prompt political interventions to try to put the fire out. That's where you end up with the sorts of things that happened in Oakville and Mississauga. The political level feels it needs to become involved because it has to try and put the fire out in some way, that the political cost of what's unfolding has become too high for the government of the day to let it just play out the way it's playing out, which I think is what happened here.

Ms. Lisa MacLeod: Excellent. I'll reserve further questions for us in the next round, unless any—

Mr. John Yakabuski: How much time have we got left?

The Chair (Mr. Shafiq Qaadri): You've got about three minutes.

Mr. John Yakabuski: Well, I will ask one question. You're talking about the political interference and the political cost. If you look at the situation in Oakville and Mississauga, you've got large communities and the ability to have pretty strong political effect, particularly when you've got a mayor like Hazel McCallion in the mix, who is a larger-than-life figure; I think we all accept that. Yet the government seems to have no inclination to bend to the political public pressure when it comes to the siting of wind turbines. They've paid some lip service and have said, "We're going to listen to municipalities," but at the end of the day, I haven't heard of any project that has actually been terminated, scuttled or not proceeded with based on municipal objections.

You're the political science guy, yet you do know a lot about energy. That may not be your field of expertise, but you certainly do understand it, and you do understand the politics. Why is it that the government has no interest in listening to the public pressures when it comes—because on a per capita basis, they're all across the province. Is it just because they've written off rural Ontario? What are your thoughts on that?

Dr. Mark Winfield: Again, the renewable energy part is complicated and there are competing tensions, even in

rural Ontario, over it. Initially, there were cases of municipal objections to renewable energy projects. When the Green Energy Act was adopted, we got the renewable energy approval process, which sort of cut the municipalities out of the process. To a certain degree, what has happened now, post-May of last year—

The Chair (Mr. Shafiq Qaadri): One minute.

Dr. Mark Winfield: Oh, sorry. Very briefly, then, what has happened post-May of last year is that effectively, renewable energy proponents have to demonstrate some degree of community support, so this is about, I think, a de facto municipal voice being brought in that way. Was this the best way to deal with the planning and energy interface around renewable energy? Possibly not.

Mr. John Yakabuski: Possibly? How about possibly?

Dr. Mark Winfield: I'll stick with possibly. I mean, I sat here four years ago and said, "I'm not sure this is the best approach to this question," to simply cut the municipalities out altogether, for a number of different reasons.

Mr. John Yakabuski: Ostensibly, they still have.

Dr. Mark Winfield: They do. As I say, effectively, the way the FIT rules have now been changed, it would be very, very difficult to get a contract without municipal support. But we did have the period where—and you did have some degree of social conflict around these projects in the interim.

Mr. John Yakabuski: We still do.

Dr. Mark Winfield: Yes, we still do. So—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. To the NDP side: Monsieur Tabuns.

Mr. Peter Tabuns: Thank you, Chair, and thank you, Mr. Winfield, for being here this morning. I just have a few questions.

With regard to projection of demand, my read is that historically, more often than not, we've projected more demand than actually ever materializes. Is that consistent with your read of the record?

Dr. Mark Winfield: That is, in fact—yes. Indeed, if I can be indulged with one of my exhibits—

Mr. Peter Tabuns: Indulge away.

Dr. Mark Winfield: Here we go. This is actually a good illustration of what has happened on that front. This doesn't go back the full historical period, but it gives you some sense of what happened.

If you look at the red line here, this was the Ontario Power Authority's reference forecast, as it's referred to, which was basically the demand forecast as of the original integrated power system plan. It went up to over 170 terawatt hours per year. If you look at the actual electricity consumption, which is the lighter blue line over here, you can see that instead of going up, it actually, as of 2004-05, began to go down. What we've had since then has essentially been a flat line, very mildly negative.

And then there are again disagreements about where we're going in the future. This line here is the long-term energy plan as of 2010, which suggested that demand was going to go back up, particularly as of about 2018, for some reason. This is the external forecast, which is

the North Eastern Reliability Council, which suggests, in fact, that demand is going to keep dropping until around 2018 or so and then may start to increase again.

It's important to keep in mind with NERC, which represents the utilities all over the northeastern part of North America, that this is consistent across the board. This is not unique to Ontario, that we're getting these sort of negative or flat demand forecasts.

This has been, in my view, one of the fatal flaws in the planning efforts, that for the past 30 years, going back all the way to Ontario Hydro's demand supply plan in the late 1980s, there has been a tendency to overestimate the demand forecast projection. That runs the risk of overbuilding the generating infrastructure. That is a particularly serious problem if you're dealing with things like nuclear power plants, which are extremely long-lived. If you make a bad decision, you're stuck with it for a very, very long time, and you're stuck paying for it for a very, very long time. So this has been one of the critical areas of vulnerability in the planning exercise, the question of the demand forecast.

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Mr. Peter Tabuns: Looking at your diagram, consumption had been dropping from 2005, so that by September 2009, demand had been dropping for four years when the Oakville plant was signed on.

Dr. Mark Winfield: Yes.

Mr. Peter Tabuns: That was the same year that the Mississauga contract was renegotiated, so in both cases, we've seen substantial drops in demand and—you may not know this—within the region that was going to be served by those plants, very dramatic drops year over year.

What are the key lessons to take away from the gas plant cancellation scandal, from this mess?

Dr. Mark Winfield: What this implies is the need for a much more adaptive and a much more resilient approach to planning than what the OPA has pursued so far, is the basic bottom line. There needs to be a planning framework, but it needs to be one which is sufficiently flexible that it can accommodate these sorts of uncertainties about demand.

I think the critical piece that comes out of that in particular, where this becomes particularly problematic, is around the question of the role of big, centralized infrastructure—in Ontario, read nuclear—that has very long planning and construction time frames, and then very long facility life cycles once you've built. You're looking at 15 to 20 years from the point that you make a decision to build to the point when you have a plant, and then, potentially, a facility life cycle, if you're assuming at least one refurbishment, of 50 years. As Al Gore once said, nuclear only comes in one size, and that's extra-large. You've got big, big infrastructure with very, very long lifetimes, and that becomes very, very problematic if you're dealing with this kind of uncertainty, because it precisely takes away your ability to decide to change course.

What you want is to be adding supply if you need to add supply, on a much more incremental scale. "Scalable"

is the technical term that we use. Gas has been appealing that way because you can scale it to anything you want, big or small. Renewables have that advantage, too, as you can go big or small or in between.

They also have the advantage of relatively short construction and planning timelines, less than five years, and somewhat shorter facility lifetimes, 15 to 20 years as opposed to 50 to 80 years, so you also have more opportunity to correct. You're not stuck with something forever if you discover demand is going down. Or conversely, you may discover you have to add capacity because demand is going up on you unexpectedly.

That, I think, is the most central lesson that comes out of this, that this is emerging as one of the two central problems: (1) that the demand forecast is uncertain, which makes planning hard, and then (2) you've got big technological developments happening as well that have cost implications, environmental performance implications, and reliability—outright energy performance—implications.

You've got to cope with that uncertainty, too, that we discover things are working better and are becoming cheaper as time goes on. Conservation and renewables fall into that case. We've had this unexpected development: Natural gas prices have fallen dramatically, relative to what we thought they would be when a lot of the planning decisions were made. Costs of renewables have been dropping dramatically as well, as technology is evolving. Storage technologies are coming online. The grid is becoming smarter, as it were.

We need to be able to take those sorts of technological developments into account as well, so the system has to be sufficiently adaptive and flexible. This is the tricky part. You need both adaptability and flexibility. At the same time, you do want some measure of rigour in the review of the plans that emerge. You still want to get in front of a real regulator where you can ask the questions about, "Are the assumptions valid and are we sufficiently flexible in how we've approached the planning process and our technological choices and our investment choices that enable us to cope with these sorts of uncertainties?"

There are other uncertainties emerging as well. The other big one that's now getting a lot of attention is the impact of climate change, which affects the performance of many of the generating technologies and also has implications in terms of resilience of the grid and of the overall system—again, something which was not taken into account very well in the OPA's planning exercises. It's very, very late in the game that we've—before the ice storm, but those conversations only began in a serious way in the last couple of years, about, "What are the implications of climate change for the grid and for transmission systems and for resilience?" Again, these are things the system has to be planning to be able to cope with. This is where the adaptive capacity comes from.

What you had happening, it is my suggested diagnosis, is that the government was effectively trying to deal with this problem of adaptation and uncertainty through the instrument of the ministerial directive. This was sort of

the adaptive management framework that emerged, and on the one hand I can understand it, but I also see it as problematic in the longer term.

Mr. Peter Tabuns: I notice from your graph that the northeastern reliability council, NERC, has projected a substantial drop in demand in Ontario to the end of this decade—

Dr. Mark Winfield: Yes.

Mr. Peter Tabuns: —and we're about to embark on a \$25-billion program of refurbishing nuclear power plants. Should we be assessing the business case for those refurbishments in light of this?

Dr. Mark Winfield: Unquestionably. Let me see here. This is another slide. This one is a little harder to see, I suspect.

Mr. Peter Tabuns: You're right.

Dr. Mark Winfield: The crucial piece is here. These are the demand forecasts in the long-term energy plan consultation document. I would draw your particular attention to this lower line here, which is what they term the low projection. That's basically consistent with what NERC is saying and indeed what the IESO has been saying as well. Indeed, if you asked for my opinion, I think it is the more realistic demand projection.

If you look carefully out here—there's a little bit of purple here as the potential Bruce refurbishment—you'll notice that green line sort of cuts right through the middle of the columns here. The implication is that if demand looks like that, then, yes, we would be in an overbuild situation. And this here, the existing contracted resources in the course of—this is the gas, the existing and updated hydro and the renewables. One of the things that emerged here is—this is assuming also only about 40% utilization of the gas resources which are contracted, so this is even assuming relatively low levels of utilization of the gas.

So I think the answer to your question is yes, there is a very serious question about the rationale for those refurbishments at this stage of the game. This is precisely the sort of question that we would probably want to have in front of a real regulator before we proceed, because it really becomes quite crucial to test the assumptions about where demand is going to be and therefore what sorts of supply resources we're actually going to need.

Mr. Peter Tabuns: So, based on what you've said, I'd conclude that the lessons that we should have taken away from the gas plant location and then relocation, and the subsequent cost—those lessons weren't learned, and it looks like we're on a road to repeat those mistakes.

Dr. Mark Winfield: To a certain degree. I mean, I think there are potentially a number of mistakes being repeated also around nuclear refurbishment projects, which need to be looked at very carefully before we proceed. But the problem here is, say, slightly more complicated, that in a sense, the gas plants were built into a plan that assumed these relatively higher—the red curve here.

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Mr. Peter Tabuns: Yes.

Dr. Mark Winfield: When we discovered what we were getting was the blue curves, that effectively opened

up a gap in which, potentially, we had the opportunity to make choices, that we could decide we don't need some gas plants. We could have decided we don't need some nuclear refurbishments instead, or we could have made other choices about supply.

What happened was that we didn't have that conversation about what might be the best choice. How do we want to adapt the plan to this changed circumstance? Instead, the government, finding itself confronted with a political crisis, effectively made the choice in a relatively short time frame.

If I'm looking at this from a planning perspective—you know, what went wrong here—clearly something went wrong in terms of the siting and how that was managed, because we ended up with a very high level of social conflict around this, though that was not unique. But then there was also the question that we were effectively making choices about the supply technologies we're going to use in the system here, and we didn't really reflect very much on the choice that we were making. We were back to a crisis mode of decision-making and got the decision that we got.

Mr. Jagmeet Singh: Professor, what my colleague was alluding to is that we made certain mistakes—or the Liberal government made a mistake—and one of the mistakes was that in light of decreasing demand, we increased our production, increased our capacity. That specific mistake looks like it's going to be repeated because, again, in light of the evidence, which looks like demand is on the decline, we are investing billions and billions of dollars in increasing our capacity when we don't need to do it. Do you agree that it looks like we are on that path again?

Dr. Mark Winfield: I think there's a significant risk that—

Mr. Jagmeet Singh: So why don't you agree that we're on that same path again?

Dr. Mark Winfield: I think that there's some degree of uncertainty about demand. But one needs also to keep the context around this, that when decisions began to be made in 2003-04, we were, at that stage, being propelled by a context of crisis. The expectation was that demand would continue to grow. There were all sorts of reports that suggested that was the case, and that 80% of generating assets were going to reach end of life because of nuclear plants reaching end of life, the coal phase-out and other things happening. At that stage, decisions were being made on more of a crisis management sort of frame. We've learned subsequently that there wasn't that much of—the crisis was less than we thought.

But, that said, I do think this problem seems to keep repeating. Why it's happening is a more complicated question.

Mr. Jagmeet Singh: Sure. What I want to drive home is that if we are not serious about identifying the problem, we won't be serious about rectifying it. If we can't say clearly that the mistake was—one clear mistake; there are many others. It's obviously a complicated issue, but one mistake is that if you don't need something, if the

demand is not there, we shouldn't be building more. If there seems to be that issue at hand that demand is going down and we are going to commit billions of dollars to increasing construction without looking at the variables, without having a discussion, then we're repeating a mistake. It needs to be said forcefully so that we can take it forcefully and do something about it.

Dr. Mark Winfield: That conversation needs to happen. This is my point about why the plan needs to go in front of a real regulator, because I think we need to have a proper conversation, a rigorous conversation, about the demand forecast question, and we need to have a proper conversation about the advisability of the different infrastructure investments in response to that. The only place to do that is in front of a proper regulator, where the evidence can be examined in a rigorous way.

We can engage in consultations and discussions forever, but we may never get to a resolution. The reason we have those sorts of regulatory processes is precisely a way of putting these kinds of disputes in a place where we can have a reasonable, managed and bounded, and constructive conversation about them.

Mr. Jagmeet Singh: Thank you, Professor. My colleague has some more questions.

Mr. Peter Tabuns: Just going back to the article you wrote about the gas plant scandal for the Ottawa Citizen, I think it was: One of the policy fixes/repairs that you proposed was taking on the California approach of setting conservation as the first priority for supply and allowing the system to be built around that priority. Can you expand on that?

Dr. Mark Winfield: This has been a long-standing suggestion for Ontario, and it's one which, in fairness to the government, the long-term energy plan, the most recent one, does acknowledge; it talks about conservation first. This is not an unusual policy approach. It's one we see in British Columbia. It's certainly one that California has worked with now for approaching 40 years. The basic rule is that before you can get approval to build new infrastructure, particularly generating infrastructure, you have to demonstrate that you're making an effort to pursue all of the achievable and cost-effective, i.e. economically rational, opportunities for conservation.

The problem again with the long-term energy plan is this question of, how do you enforce that? In California, utilities have to go in front of the California Public Utilities Commission to get approval to put things into the rate base to build new power plants or to do other things. The commission asks, "Where is your conservation plan?" The same thing goes on in BC to some degree. In Ontario, if we don't have the plans going in front of the energy board, we don't have the enforcement mechanism whereby the board can ask the question and make it stick: "OPA, are you demonstrating you're pursuing all of the achievable cost-effective conservation before we proceed with building new stuff?"

Mr. Peter Tabuns: Thank you, Doctor.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. To the government side, Mr. Delaney: 10 minutes.

Mr. Bob Delaney: We have just two or three questions that, I hope, will be brief ones. I've noticed, very much like the government, you do believe in the process of conversations, and in looking at your graph here it suggests that the two extremes are about plus or minus 7% to 8% around the actual electricity consumption. Would that be about right?

Dr. Mark Winfield: It would be more than that, I think.

Mr. Bob Delaney: Certainly on the low end, it would be somewhere in the 7% to 8%. Looking at the red line, which is a nine-year-old estimate. That one would be higher, but that 2005 estimate would certainly be superseded. But the point of that is, let's talk a little bit about engaging different groups of stakeholders. Who would be the parties that should engage with one another with regard to municipalities?

Dr. Mark Winfield: In terms of energy planning?

Mr. Bob Delaney: Exactly.

Dr. Mark Winfield: The key actors there are the municipalities themselves and the LDCs, local distribution companies. They are the providers. In some places, those conversations have begun to unfold. Guelph is the most prominent example of that. In other places, it's still at an early stage.

Again, there's this problem with these two levels, though, as I described before, that you have what we term "community energy" but sort of termed, in the policy community, "community energy planning," which is what Guelph and others have been doing, which is sort of focused on district energy, self-sufficiency—those sorts of things. There's that conversation. Then you also need to bring the gas utilities into that conversation as well. They are important players, but then there is this other question of, well, municipalities may develop these plans which may embed distributed generation, energy conservation, a certain amount of renewable generation. Then there's this question of what happens at the provincial level where what the municipality is doing interacts with what the province is doing.

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Mr. Bob Delaney: Just so we don't let ourselves run away with the question, we were talking about entities that should engage with municipalities. You've mentioned local distribution companies, gas utilities. Do you feel that municipalities should not, in a normal course of events, engage with residents?

Dr. Mark Winfield: Unquestionably.

Mr. Bob Delaney: Should not?

Dr. Mark Winfield: No, they should.

Mr. Bob Delaney: Okay, they should.

Dr. Mark Winfield: I'm thinking about who the actors are. If we're talking about community energy planning, then, yes, you have to have the municipal government, you have to have the utilities and, yes, you need the residents engaged in the conversation too.

Mr. Bob Delaney: From the standpoint of the regulator, the OPA, who should engage routinely with the OPA?

Dr. Mark Winfield: It depends on the context. It depends on what question the OPA is asking. It's partially a question. In general, there is the cast of usual suspects.

Mr. Bob Delaney: Who are the cast of usual suspects?

Dr. Mark Winfield: There is a policy community, if you like, which includes, you could argue, the OPA itself, the IESO, Hydro One, the LDCs, the Ministry of Energy, possibly other ministries as well, and then—

Mr. Bob Delaney: For the purpose of the question, let's separate policy from the OPA and look upon the OPA as the licensing entity, just within the context of licensing and doing long-term projections. Who should the OPA, in the normal course of events, be engaging with?

Dr. Mark Winfield: Well, keep in mind that the OPA—I don't think of it as a licenser. That's the energy board's role. The OPA is the planner and it's also the contractor. It ultimately signs the contract with a supplier to develop a facility.

Mr. Bob Delaney: Let's correct that because in that context you're correct. Let's talk about it, then, from the contracting point of view.

Dr. Mark Winfield: Again, it depends on the context and what one is doing. I think that at a policy level, at the planning level, you want engagement with as wide a range of stakeholders in the public as possible, because part of what you're trying to do is build legitimacy.

Ideally, what you want, when the OPA articulates a plan, in the most part, is acceptance of that plan by both what we would term the state and non-state actors in political science speak, if you like, both the government agencies and entities who are involved in the process, be they provincial or municipal or local. But you also want the non-governmental actors to accept the outcome. So at that level you want as broad an engagement as possible.

When it comes to the specific question of contracting, that's more complicated and there are issues. My own preference would be a relatively high degree of transparency, where the contracts are available and people can see, once the contracts are signed, what's there. You certainly need to have very clear transparency around bid conditions, qualification, those sorts of questions. You want a relatively high degree of openness there as well.

Mr. Bob Delaney: In your remarks earlier, you talked about the jurisdiction of California and some of the ideas it had that you liked. You mentioned British Columbia. My final question for you is this: Are there any other jurisdictions that you feel Ontario should examine regarding energy-siting practices?

Dr. Mark Winfield: Well, siting is different from planning. Obviously—and indeed the paper we circulated on the question of the renewable energy approvals has touched on this—the approaches in Western Europe have generally been somewhat different and have seen much,

much lower levels of social conflict around renewable energy sources. So in particular there we looked at Germany and Denmark as possibilities.

In other places, there are disputes still going on: site C in British Columbia; there's a conversation in Manitoba unfolding about Conawapa right now. There are other places to look to, although, frankly, Ontario, pre-late 1990s, in some ways had a relatively sophisticated process—through the Environmental Assessment Act, the Planning Act and the Consolidated Hearings Act—that had been developed specifically for the purpose of dealing with the social conflicts which were emerging around hydro projects, actually more transmission and distribution projects involving Ontario Hydro.

We had certain elements of this ourselves, which, in the confusion of the late 1990s and early part of the last decade, were lost. We could also look to those things a little bit as well, because on the siting questions, we're doing a certain amount of reinventing of the wheel. We had processes for dealing with some of these things that have been designed specifically to try and manage these sorts of social conflicts and get us to outcomes that were seen as legitimate and therefore accepted by the host community. We've kind of lost all that history and all that institutional memory around how to do that, and so we need to think about that as well.

Mr. Bob Delaney: Thank you very much, Mr. Winfield. Chair, I think we're done.

The Chair (Mr. Shafiq Qadri): To the PC side: Ms. Thompson.

Ms. Lisa M. Thompson: Your presentation today has been provocative. Thank you for being here. I'm wondering, will you be able to share your slides?

Dr. Mark Winfield: Yes. These are all in the public realm. I can send the file to the Clerk. That's no problem at all.

Ms. Lisa M. Thompson: Okay. I'd like that very much. Thank you.

Okay, you went back to that slide. Good. In your opinion, can you explain the absolute discrepancy, the glaring discrepancy, between OPA and the rest of the forecasting? How did they get off the rails?

Dr. Mark Winfield: Well, I think there are a number of things that happened, some of which are not entirely OPA's fault, although there were criticisms very early on, even when the OPA was beginning to formulate the first integrated power system plan, that they were overestimating on the demand side. At least initially, it was thought that the drop-off that you saw there between about 2006 and 2008-09 was partially cyclical, that it was the economic downturn. The expectation was the curve would start to do this afterwards.

What they didn't fully take into account was that the nature of the economy in Ontario has been changing, and it's becoming less energy-intense, so there's a structural change happening in the economy.

Ms. Lisa M. Thompson: Why is that?

Dr. Mark Winfield: That's a very complicated question. It largely relates to the decline in manufacturing

and the growth of service- and knowledge-based economic activity instead. The drivers of that are complicated: labour costs—there are for some sectors, like forestry, problems of competition from other jurisdictions that can grow trees faster. It's a very, very complicated set of questions around structural change. Also remember that structural change long predates this. Most economists would tell you that change has been happening in the Ontario economy since the mid-1970s, really since the first oil shock, accelerated in 2008 somewhat, which is what tends to happen in Ontario during recessions. That's part of what's happening there.

The other problem was that in 2010—because what we're really looking at here was the long-term energy plan medium growth as of 2010—the government did make the demand forecast part of the supply mix directive. It told the OPA, "This will be the demand forecast you'll have to work with." From the viewpoint of many of us who have watched this, that was very problematic because, as I was discussing with Mr. Tabuns, the demand forecast has been the real point of vulnerability in our attempts to do electricity system planning in Ontario for the last, really, 40 years. That's where the plans keep falling apart, so it's the part you would probably most want a conversation about. I think that was part of the problem.

Behind that, I think we're still—this gets more complicated—in a world where we tend to associate increasing electricity demand with economic prosperity. So there may be a reluctance on the part of the government to say demand will go down, because people may perceive that as meaning the economy is going bad. Of course, the tail end of this curve—part of the interesting thing is, although demand is flat to mildly negative, we're actually now in a period where economic growth is mildly positive, but it is positive. The economy is actually growing now, even though demand is basically flatlined.

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We're in an interesting zone, but we're dealing with a political context where we still have very deeply embedded in our minds, and in the public's mind, that increasing energy consumption equals economic expansion equals good, and decreasing energy consumption equals economic contraction equals bad. I think that's part of the intellectual hurdle we've been trying to deal with. Because, at the same time, the conservation agenda is precisely about how we are more economically productive when using less energy, so ideally we want productivity to be going up while energy consumption is going down.

Ms. Lisa M. Thompson: I appreciate that. Just changing gears, I really want to hear your viewpoint on a comment you made earlier. You said something to the effect that climate change has an impact on all of our technologies.

Dr. Mark Winfield: Yes.

Ms. Lisa M. Thompson: I'd like for you to share your perspective on how climate change is going to spe-

cifically, either positively or negatively, impact renewables.

Dr. Mark Winfield: That's a good question, to which we are only partially beginning to get answers. Some of my students actually did some work on this. The answer is surprisingly complicated. Wind was generally perceived to work better, because you have higher wind conditions. Hydroelectric is likely to actually work better because most of the reservoirs are in northern Ontario and, in fact, we get increased precipitation, which was a bit of a surprise. This is very preliminary work, and I think these are questions that need to get investigated much more thoroughly.

In effect, the renewables actually didn't do badly. It was more the thermal technologies whose performance seemed to suffer more, mostly because anything that needed cooling water becomes less efficient if the ambient temperature of the water that you're using for cooling purposes—so this is basically something with a turbine: a nuclear plant, potentially a combined cycle gas plant, a coal plant. Basically, if the cooling water that you are using to cool down the steam at the end of the cycle gets warmer, your performance declines and the system becomes less efficient.

So the extent to which I've seen analysis and commentary—and, as I say, I've emphasized this is largely at the level of my graduate students, not something more formal—that was the take on it, that the renewables would actually do okay in terms of their performance. It was more the thermal technologies that ran into some difficulties.

Then, there were obviously big concerns, as we just went through, about the grid, the transmission and distribution infrastructure and its vulnerability to extreme weather events.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Thompson. To the NDP, final round: Mr. Tabuns or Mr. Singh.

Mr. Jagmeet Singh: I just want to go back on this issue of the refurbishment of Darlington or just the refurbishment in general as one of the issues, and the buildup around nuclear. What are some of the obstacles that the government faces that can explain or perhaps shed some light on why it seems that it's so difficult to do what would seem to be quite obvious, that this is a huge, colossal investment, and that to make such an investment, at minimum, it should have a strong business case and it should have some really thorough decision-making that should be a part of it? Is there some sort of barrier that prevents that from happening?

Dr. Mark Winfield: I think that's a good question. One needs to keep in mind that, in Ontario, we've never actually had a nuclear project go through a formal economic review. That didn't happen when the original fleet was constructed in the 1960s and 1970s and 1980s; it didn't happen when the Nuclear Asset Optimization Plan was put in place in 1997; and it didn't happen when the most recent round of refurbishments, principally the Bruce contract, went forward as well.

There's a long history, for some reason, of having not gone there, usually because arguments were made at the time that we were facing some sort of supply apocalypse and that, given the time frames around which things around nuclear operate, we don't have time for that conversation. In some cases, we didn't even have the institutional infrastructure to accommodate it pre-1975. That, I think, has been part of it, that we've always avoided that. I find even among my economic colleagues, there's this perception that somehow nuclear is different and the regular rules shouldn't apply. I think that view is changing as the numbers come out of the Bruce refurbishment. We know how far over budget it went and we know that we actually had to write off two of the Pickering refurbishments as well.

I can't say more than that, in that the nuclear industry seems to have been able to persuade the government that it's so fundamental and so different to the system that we can't afford that kind of a review. If the counter argument is that, given that we seem to have some structural breathing room in terms of demand, some of that urgency has been released, it would probably be very advisable to take the opportunity to engage in precisely that kind of a review in front of a real regulator, and I would emphasize an economic and environmental regulator, not the Canadian Nuclear Safety Commission, because it's not concerned with the economic issues. It's concerned with the safety and operational issues. We need to get the question of the refurbishments in front of a real economic regulator and see where that conversation goes.

Mr. Jagmeet Singh: Who would be someone who would satisfy that in economic and environmental?

Mr. Mark Winfield: It's the energy board, with an appropriate mandate. The environmental dimension, they're somewhat weaker on. There are long-standing questions around designation under the Environmental Assessment Act as well, which is another way of getting at these bigger questions. But it seems to be that the obvious forum is the energy board or some form of joint board involving the Environmental Review Tribunal.

Mr. Jagmeet Singh: Why do you stress proper mandate? What's wrong with the mandate now?

Mr. Mark Winfield: Well, as it stands, the energy board has been tending towards a very, very narrow economic interpretation of its mandate. It has tended to exclude consideration of things like avoided environmental externalities in costing things. It has been somewhat unhappy apparently about conservation activities on the part of both the LDCs and the gas utilities lately. Within its core mandate it doesn't have an environmental mandate. That only really comes from the substitute for the environmental assessment of the integrated power system plan that we got in 2006, which told the OPA to consider environmental protection, environmental sustainability and safety in developing the IPSP. We never got to that part in the OEB hearings, so we have no idea what the OEB would do with that. It probably needs a more robust mandate in that regard as well.

But I think there are many people who have studied electricity policy in this province for a very long time who would be very interested simply to see a full-cost life cycle economic assessment of nuclear relative to the available alternatives, including arrangements with our neighbours to the east.

Mr. Jagmeet Singh: You had this next slide over from the slide that's currently being shown: the green existing and contracted resources. If you could just expand briefly maybe just in response to my assertion or my understanding of what you said, which is that the green portion only accounts for a certain level of natural gas and actually natural gas could be increased if need be and essentially within a certain margin, if demand was to increase, that increased demand could be served by increasing the reliance on it or just increasing the output from gas.

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Dr. Mark Winfield: In the short term, yes. In the longer term, it's not so advisable, partially because gas does—

Mr. Jagmeet Singh: The unreliability of gas prices—

Dr. Mark Winfield: Well, it creates greenhouse gas emissions, and as we move from conventional sweet gas to unconventional fracked gas, the life-cycle environmental impacts are getting uglier. So gas certainly makes sense as a marginal fuel. Certainly in the short term, if we were to suddenly discover that demand was going way, way up, running the gas plants more in the short term is a perfectly viable way of dealing with that problem. In the longer term, you would need to build more supply technology. My own preference, obviously, would be (1) to maximize conservation opportunities and then (2) go to renewables, with appropriate storage resources to back them up.

Mr. Jagmeet Singh: Okay. Just to turn to renewables, one question—and this is something that you've touched on briefly—is that as time goes forward, particularly with renewables, being that they're relatively newer technology, the cost is going down year by year. However, in terms of the cost of renewable energy, there's a perception that it's quite expensive.

Dr. Mark Winfield: Right.

Mr. Jagmeet Singh: Can you speak to the projected cost for wind-related energy and other renewables, taking into consideration the fact that the cost will go down as technology improves?

Dr. Mark Winfield: For wind, we're already getting pretty close to grid parity. Eight to 10 cents is basically commercial viability. Part of the problem was that the FIT program paid commercial developers too much, relative to what they needed.

We have a paper that's just coming out on energy policy that talks about the economic debate around the FIT program. In effect, part of the problem there was that you ended up with a program that was designed around the needs of community-based developers, and including the rates, but that actually ended up being dominated by

commercial developers who didn't need those kinds of rates to make the system work.

The Chair (Mr. Shafiq Qaadri): One minute.

Dr. Mark Winfield: So that problem, we're getting at. The rates are down, and the program is now focused on smaller projects and more community-based developers.

Mr. Jagmeet Singh: Quickly on biomass: anything? In Europe, it's quite popular, carbon-neutral—

Dr. Mark Winfield: Yes. I'd have to look up the numbers. Biomass, again, is basically getting into the range of grid parity. The crucial—

Mr. Jagmeet Singh: And why isn't it as relied upon in Ontario?

Dr. Mark Winfield: We just haven't developed the technology that far.

The other crucial point that we made, and that other people have made, in doing the analysis of the cost impact is that—and we looked. We did a very extensive literature review. We looked at all the papers that looked at the cost impacts of the Green Energy Act. The crucial distinction that happens is that those who are very critical tend not to consider the question of the avoided externalities associated with the alternatives, principally natural gas.

If you put some economic value on—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh.

Remarks in Punjabi.

I'd like to thank you as well, Professor Winfield, for your testimony and presence here.

Just before we conclude, I'd just like to respectfully remind committee members about the scope of the committee. I appreciate that we have an expert who can speak to us on wind energy, biomass, solar, nuclear etc., but there is a certain particular mandate of the committee, which might occasionally influence your questioning.

Nevertheless, we shall reconvene this afternoon. Thank you.

The committee recessed from 1004 to 1500.

MR. CHRIS WRAY

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, Chris Wray, senior policy adviser of the office of the Minister of Energy. I would invite him to be affirmed by our highly able Clerk now.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Chris Wray: Yes.

The Chair (Mr. Shafiq Qaadri): Welcome, Mr. Wray. You have five minutes for an opening address, beginning now.

Mr. Chris Wray: Thank you, Chair, and honourable members. My name is Chris Wray. I'm honoured to serve as a senior policy adviser in the office of Minister Bob Chiarelli. I started working for Minister Chiarelli in his capacity as Minister of Infrastructure in October 2010 and continued with him when his role expanded to include the Ministry of Transportation in the fall of 2011. I served as special assistant, operations, at MOI, and later as a policy adviser at MTO.

The minister was shuffled in February 2013 to the Ministry of Energy, and roughly one month later I also moved to energy to take on the conservation file. I've been proud to be a part of this government's work in the Ministry of Energy over the last 11 months. I'm particularly proud of the work we have done on the conservation file, including the release of Conservation First last summer.

As my chief of staff, Andrew Teliszewsky, testified last week, the relocation of the Oakville and Mississauga gas plants was a file that he dealt with and one in which I had no involvement.

I would also like to outline my role with regard to document disclosure requests from this committee. Specifically, there were two motions passed that required our office to perform a search for documents relating to committee requests. Our office followed the directions provided by the Ministry of Energy, developed in collaboration with Cabinet Office, to search for and disclose all relevant records. In his appearance before this committee last week, Mr. Teliszewsky outlined this process in further detail. As this committee's mandate also pertains to siting recommendations of large energy infrastructure, this does not fall under my purview.

I'm happy to answer any questions you may have to the best of my abilities.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Wray. Beginning with the PC side, Ms. MacLeod.

Ms. Lisa MacLeod: Thanks very much, Chair. Thanks very much for coming in, Chris. It's great to have you here today. A couple of quick questions for you.

I'm just wondering how you prepared for today's testimony. A number of your colleagues have been before us, many of whom have said the same types of things, and I'm just wondering how you prepared for that. Did you prepare with your minister, your chief of staff, anyone in the Premier's office?

Mr. Chris Wray: Yes. With our press secretary, Beckie Codd-Downey, and our legislative assistant, Matt Whittington.

Ms. Lisa MacLeod: And what happened? Did they give you backgrounders, talking points, those sorts of things?

Mr. Chris Wray: Yes, they gave me a sense of the types of questions that might be asked and asked me to make a timeline of my history here.

Ms. Lisa MacLeod: Yes. So they worked with you. Did either of those individuals, the press secretary or the legislative assistant, assist with the speaking points or the

talking points of either the minister, the Premier, or the chief of staff who appeared here last week?

Mr. Chris Wray: I'm not sure.

Ms. Lisa MacLeod: Did they ever indicate that they had provided them assistance with the context or the content of the discussions and what those were?

Mr. Chris Wray: I really had no involvement.

Ms. Lisa MacLeod: No? Can you explain to me, then, your involvement in the Ministry of Infrastructure at the time?

Mr. Chris Wray: Yes. I was hired as a very junior staffer. I did some work on expanding the IO loan program and some other, mostly administrative, stuff.

Ms. Lisa MacLeod: Did you ever work with the OPA in that position?

Mr. Chris Wray: No.

Ms. Lisa MacLeod: Did you work at any time with the previous Minister of Energy's office?

Mr. Chris Wray: No.

Ms. Lisa MacLeod: At any time when you were involved at the Ministry of Infrastructure, did you ever deal with Infrastructure Ontario? I think you just said that you had worked a bit with IO.

Mr. Chris Wray: Yes, mostly through the ministry, but I may have been involved in some meetings with the personnel at IO.

Ms. Lisa MacLeod: Can you elaborate on those personnel matters?

Mr. Chris Wray: At the time, my main interaction with IO was around the expansion of the IO loan program to include more eligible applicants. The only person I can really remember speaking to specifically would be Mary Lowe.

Ms. Lisa MacLeod: And do you ever recall working or speaking with David Livingston, either during his time at IO or when he was with the Premier's office?

Mr. Chris Wray: No.

Ms. Lisa MacLeod: No? You never spoke with him at all?

Mr. Chris Wray: No.

Ms. Lisa MacLeod: When you were at the Ministry of Infrastructure, were you ever consulted by the Premier's office, the Ministry of Energy or the OPA before the decision of the gas plant cancellation had been made?

Mr. Chris Wray: No.

Ms. Lisa MacLeod: Did you ever receive any briefing notes or talking points on that?

Mr. Chris Wray: No.

Ms. Lisa MacLeod: Where were you when you found out that the government—or the Liberal Party—had made the decision to cancel the Oakville gas plant?

Mr. Chris Wray: I don't remember when I specifically learned about that, but I imagine I was in Ottawa on a leave of absence.

Ms. Lisa MacLeod: And did you work on a political campaign during that election?

Mr. Chris Wray: Yes.

Ms. Lisa MacLeod: And whose campaign did you work on?

Mr. Chris Wray: MPP Chiarelli's.

Ms. Lisa MacLeod: Is that right? Okay. We didn't vote the same way in that election. You'd be surprised to know that, I'm sure.

So is it fair to say that both you and your chief of staff, Andrew—I can't say his last name—were on secondment to work on Bob Chiarelli's campaign in the last election?

Mr. Chris Wray: I was on a leave of absence.

Ms. Lisa MacLeod: Okay, but you worked on his campaign, right? You just told me you did.

Mr. Chris Wray: Yes.

Ms. Lisa MacLeod: Okay. But Andrew worked on that campaign, I think you told me yesterday. Is that accurate?

Mr. Chris Wray: Yes.

Ms. Lisa MacLeod: Were there any other members of Bob Chiarelli's staff in Toronto who took leaves of absence to work on his campaign in Ottawa West—Nepean?

Mr. Bob Delaney: Chair—

Ms. Lisa MacLeod: It's actually very important, because I'm trying to get to a point on when the announcement was made.

Mr. Bob Delaney: I have no problem with your asking a question. Could you just tell me where you're going with this and just give me the latitude? Because I would prefer not to interrupt you.

Ms. Lisa MacLeod: Yes. The only reason I'm asking is because I remember where I was on the day that this decision was made. I remember the tweet coming from Robert Benzie. I remember all of that. I want to get a picture of all of these young fellows that took the time, a leave of absence, to go to work in my community at the time—and they're all very critical in the Minister of Energy's office now, and they were all working as ministry staff in the Ministry of Infrastructure.

The Chair (Mr. Shafiq Qaadri): All right. Let's just get to the scope, but go ahead.

Ms. Lisa MacLeod: Okay. I would like to get a clear picture of the folks who were at the Ministry of Infrastructure's office who took a leave of absence—legitimate, by the way; it's legitimate to take a leave of absence if you're not getting paid to do whatever you want to do in your own time. The context I'm trying to get at is, who else may have been there, other than you and Andrew. Can you provide me with that?

Mr. Chris Wray: Sure, yes. The only other person was David Black.

Ms. Lisa MacLeod: Okay. And what does David Black do now?

Mr. Chris Wray: I believe he works for the concrete association.

Ms. Lisa MacLeod: Okay. And what did he do in Bob Chiarelli's former office?

Mr. Chris Wray: He was a senior policy adviser at infrastructure.

Ms. Lisa MacLeod: He was a senior policy adviser at infrastructure. So the three of you were there. I found out via a tweet from Robert Benzie that this was happening

over in Oakville in the middle of the campaign. At that point in time, were you or the other two senior staff who were on leave working in Bob Chiarelli's campaign office notified that the Liberal campaign team had made that decision?

Mr. Chris Wray: I wasn't. I can't speak for them.

Ms. Lisa MacLeod: No, but you weren't. And at any time, was your campaign provided any talking points from the central campaign or from the then Minister of Energy's office or the Premier's office on what to say in terms of the cancellation—any of the positive things that people might have talked about in Oakville or any of the negative things people might have talked about in Ottawa?

Mr. Chris Wray: Again, I can only speak for myself, but I wasn't provided anything like that.

Ms. Lisa MacLeod: So the campaign team wasn't provided anything. Your minister would have gone out and perhaps done some media, but there was no information provided to you?

Mr. Chris Wray: Not to me, no.

Ms. Lisa MacLeod: To your knowledge, did the minister find out via Twitter as well, or would he have been notified at a cabinet meeting?

Mr. Chris Wray: I wouldn't want to speculate on that.

Ms. Lisa MacLeod: You wouldn't want to speculate on that. Okay. That's interesting.

If I can now turn our attention away from that period, to the Ministry of Energy. As the senior policy adviser, at some point you would have been briefed on the gas plants. Is that true?

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Mr. Chris Wray: No. My chief of staff, as he said in his testimony, handled that file exclusively.

Ms. Lisa MacLeod: Right.

Mr. Chris Wray: My involvement at energy has been limited strictly to my files: conservation and a few others.

Ms. Lisa MacLeod: Okay. Have you ever been acting chief of staff in the office when Andrew is away?

Mr. Chris Wray: No.

Ms. Lisa MacLeod: No? Who is the acting chief of staff when Andrew is away?

Mr. Chris Wray: Mark Olsheski.

Ms. Lisa MacLeod: Mark Olsheski. At any point in time, was Mark Olsheski acting chief of staff between Minister Chiarelli being appointed Minister of Energy and today?

Mr. Chris Wray: Sorry; can you clarify the question?

Ms. Lisa MacLeod: Yes, sure. In case I'm not being clear: At any point since Bob Chiarelli was appointed Minister of Energy, to today, was Mark Olsheski ever in the position of acting chief of staff?

Mr. Chris Wray: Yes, I think, for a day or two.

Ms. Lisa MacLeod: A day or two? Okay. Are you the director of policy now, or the senior policy adviser? How does that structure work?

Mr. Chris Wray: There are three senior policy advisers. I'm one of them.

Ms. Lisa MacLeod: And there are no juniors?

Mr. Chris Wray: There is a policy adviser.

Ms. Lisa MacLeod: Okay, there's a policy adviser who is junior, but we're not going to say that to hurt their feelings today, because they might be watching at home. We'll call them the intermediate. But we don't have a director on top?

Mr. Chris Wray: No.

Ms. Lisa MacLeod: You directly report to whom?

Mr. Chris Wray: To my chief and to the minister.

Ms. Lisa MacLeod: To the chief and to the minister? So there's nobody else there? Okay.

Of course, we all want to apologize to the poor junior policy adviser, because they must not be too young. See, I have to inject a little bit of humour. I don't know. You guys are doing a good job, the young staff who come in to take these questions, so good for you guys to hold your composure.

I want to move on a little bit to the document in front of me, the long-term energy plan. Obviously that came out in December, and in that period of time I'd asked the minister in the House if the costs associated with the cancelled gas plants were included. He said, "No." He later retracted that and said, "Yes, it was." Your chief of staff came here last week and said it was as well, so this is a pretty critical document on how much cost we're going to assume as ratepayers for these cancelled gas plants. There has been speculation that it could be \$2 or \$4 a year per person in Ontario. I think that, regardless of how much it costs, the folks of Ontario are angry.

What I'd like to know, if we can move to the long-term energy plan for a moment, is, what role did you play in the development of this document?

Mr. Bob Delaney: Chair, I do have to interject on a point of order on that.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, on a point of order.

Mr. Bob Delaney: I don't think there's anything ambiguous about the fact that that is well outside the scope of the committee's mandate.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, your point is well taken. We are all anxiously anticipating a connection of the line of questioning, which we expect is forthcoming—

Ms. Lisa MacLeod: You look like anticipation is just oozing out of you.

The Chair (Mr. Shafiq Qaadri): That's the caffeine, Ms. MacLeod, but go ahead.

Ms. Lisa MacLeod: The question I had was this: What role did you have in the development of the long-term energy plan, in the context of how much these cancelled gas plants will make the ratepayer pay as a result of the 42% increase that is within here? Is that acceptable to you, Chair?

The Chair (Mr. Shafiq Qaadri): I feel—

Ms. Lisa MacLeod: You looked excited and enthusiastic about it.

The Chair (Mr. Shafiq Qaadri): —very connected, yes.

Mr. Chris Wray: My role in the long-term plan was primarily to do with the conservation chapter of it—it starts on about page 20, I believe, through maybe 29—and then on some energy innovation and storage areas closer to the end.

Ms. Lisa MacLeod: With respect to that, though, the numbers that are inside this document—we talk about electricity service forecast; we talk about prices; we talk about amending, for example, the Green Energy Act; wind dispatch; deferral of nuclear; global adjustment review—all of those sorts of things. At some point, somebody had to combine all of those various sections, yours included, into a document that would have included the costs of the cancelled gas plants.

So I guess what I'm asking you is, in terms of what your role was—you may have had a specific role in terms of policy content—can you help me understand the process by which you worked, or the format, and how this information was funnelled into a completing document, and, if you worked with any of the folks who had anything to do with crunching the numbers to get to how much the conservation efforts may save or cost Ontarians, how much the gas plants may have saved or cost Ontarians and how much wind turbines would save or cost Ontarians?

Mr. Bob Delaney: I'm sorry, Chair—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Mr. Bob Delaney: I am sorry to interject again. Although gas plants were mentioned in the preamble to the question, the substance of the question doesn't relate to the mandate of the committee.

I appreciate what the member is trying to do, but I would suggest that the estimates committee, later on in the year, would be a place where she could explore this on a fulsome level without a word of objection from any of us.

The Chair (Mr. Shafiq Qaadri): Same comment, same ruling, same anticipation.

Go ahead, Ms. MacLeod.

Ms. Lisa MacLeod: Thanks very much. Again, I'm just trying to figure out, if I can—without any more interruption from my good friend from Mississauga—if it's possible for you to walk us through the process by which you and others would have brought your information from your specific pages to a central person or a central committee or that central document, so that we could assess what the costs and those true numbers are.

Mr. Chris Wray: Yes. Throughout the summer, there was a series of consultations. We take the advice of stakeholders and those we speak with—the agencies, the OPA, the ISO, the OEB, as well as the ministry—in determining—and again, I can really only speak to my section—basically, what content will go into this document on conservation. Then, that goes into the OPA, and they're the ones, really, who do the price projections and the demand forecasting and that sort of thing.

Ms. Lisa MacLeod: Okay. So the OPA would have effectively taken all of this information and written the document, or did the Ministry of Energy's office?

Mr. Bob Delaney: Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, on a point of order.

Mr. Bob Delaney: Chair, that's well outside. There's not even anything in the preamble that's remotely linked to the committee's mandate. I would very much like to have the discussion stay within the committee's terms of reference.

I'm sorry to do this; I don't enjoy doing this. I actually enjoy your questions, but—

Ms. Lisa MacLeod: You're hurting my feelings. I'm feeling like the junior policy adviser right now.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. The points are well taken, Ms. MacLeod, so I'd invite you to please bring it to the scope of the committee.

Ms. Lisa MacLeod: Okay. What I'm asking, Chair, is that in the context of the cancelled gas plants in Mississauga and Oakville, someone had to pay for those. I contend it is the ratepayer and the taxpayer, who tend to be one person.

There is a series of numbers in the long-term energy plan that forecast what the cost of electricity service is expected to be, over the next five years and over the period of the next 15 to 20 years.

Given that, what I'm asking—when this document was provided, I'm told that the OPA came up with the numbers. So what I'm just naturally now asking is, who prepared this document, with respect to the costs of the cancelled gas plants as well as whatever else is included in this document? I want to know who put the document together: the OPA or the minister. Are these the minister's numbers for the cancelled gas plants, or are they the OPA's numbers for the cancelled gas plants?

The Chair (Mr. Shafiq Qaadri): How the numbers were put together is relevant, but if the witness is unable to comment on that, then perhaps we might move on. But I'll leave it to you.

Mr. Chris Wray: I'm unable to comment on that.

Ms. Lisa MacLeod: You're not going to comment on that? Well, it was good of you to give them the answer.

Mr. Peter Tabuns: He said he was not able to comment. Is that correct?

Ms. Lisa MacLeod: Who did you give numbers to, and would anybody in the—was it to the OPA, or was it internally to the Minister of Energy?

Mr. Chris Wray: The—

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Mr. Bob Delaney: What does the question have to do with the committee's mandate?

The Chair (Mr. Shafiq Qaadri): Anyway, I appreciate your comments—

Mr. Chris Wray: Will you just clarify the question?

Ms. Lisa MacLeod: Okay. Let me just say it the way we need to say it. We already have established why I am asking the question, and I'm allowed to ask the question. I want to know, when you prepared your numbers for your part of the plan—or whoever provided numbers for

their part of the plan—who did they send them to, the OPA or the Ministry of Energy?

In other words, whose document is this? Is it the Ministry of Energy's, or is it the OPA's, and who is responsible for the numbers within this document?

Mr. Chris Wray: The document is a collaboration between the ministry, the minister's office and agencies.

Ms. Lisa MacLeod: Who was the lead who would have taken these numbers, including the numbers for the cancelled gas plants? Who was the person who you would have reported to to give those to? In other words, what I'm wondering is—I know everyone collaborated, but if 12 people worked on a document, it wouldn't look consistent. So the buck stops somewhere administratively.

The minister is the person who puts his name on this document, but there's got to be somebody behind him who made that document happen. As much as I think that Bob Chiarelli is a swell guy, I know that he didn't do the backgrounder on all of this. I know how it works. He didn't do the nice, fun little cloud here in the middle of it. I'm just wondering who did that, the OPA or the Ministry of Energy?

Mr. Bob Delaney: Chair, I'm so sorry.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Mr. Bob Delaney: The question relates to process around the assembling of the content of a document that is not before the committee. I appreciate where the member would like to go—I have no trouble where the member is trying to go—but the forum is probably the estimates committee, and not this committee, because the question and the issue are outside the scope of the committee's mandate.

The Chair (Mr. Shafiq Qaadri): We'll take that under consideration.

Ms. MacLeod, you have one minute left. Continue, please.

Ms. Lisa MacLeod: Okay. I'll ask him to answer the question, and I'm just wondering if I could have unanimous consent to split my time with the Liberals for their time. It was a joke, Chair.

Go ahead. Who's responsible for this document? Who looked at the numbers for the gas plants?

Mr. Chris Wray: Again, the document is a collaboration between the ministry, the minister's office and all of the agencies. The numbers, again, are a collaboration, but really the OPA is responsible and has that level of expertise to compile it all and do those projections.

Ms. Lisa MacLeod: All right. I have no further questions. I look forward to using half of his time.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. Wray, thank you for being here this afternoon. A small number of questions. Do you retain electronic and hard-copy records in your position, in accordance with the Archives and Recordkeeping Act?

Mr. Chris Wray: Yes.

Mr. Peter Tabuns: Is there anyone who oversees what you do, to ensure that you do comply with the act?

Mr. Chris Wray: We had a training session in the summer, if I'm not mistaken. The Ministry of Government Services gave us training on ensuring that we're doing proper document retention.

Mr. Peter Tabuns: Prior to that training, when you were a political staffer at the Ministry of Infrastructure and the Ministry of Transportation, did you follow the Archives and Recordkeeping Act as you now follow it?

Mr. Chris Wray: I wasn't really as aware of it, but I never made a habit of deleting emails, personally.

Mr. Peter Tabuns: So you retained your records?

Mr. Chris Wray: For the most part.

Mr. Peter Tabuns: When you say "for the most part," could you be clearer on that? As you're well aware, you can delete minor items; if you said to someone, "Are you going out to the game tonight?" deleting that is of no consequence. Did you maintain emails of substance?

Mr. Chris Wray: Yes. At the time, again, I wasn't as familiar with the rules, but I would have kept the emails until, basically, I ran out of room, and then would have deleted what I thought to be non-essential emails.

Mr. Peter Tabuns: When you left those positions, did you turn over your records to the Archivist of Ontario, or make them aware that you had a body of records?

Mr. Chris Wray: No.

Mr. Peter Tabuns: Who in the minister's office, when you were at the Ministry of Infrastructure and Ministry of Transportation, would have been responsible for overseeing that you were in compliance with the law?

Mr. Chris Wray: I guess it would have been the chief of staff.

Mr. Peter Tabuns: And who was the chief of staff?

Mr. Chris Wray: Andrew Teliszewsky.

Mr. Peter Tabuns: Mr. Singh, do you have any questions?

Mr. Jagmeet Singh: Sure, I'll ask a couple of questions.

The Chair (Mr. Shafiq Qaadri): Mr. Singh.

Mr. Jagmeet Singh: Good afternoon. How are you today?

Mr. Chris Wray: Good. How are you?

Mr. Jagmeet Singh: Good. I'm just trying to understand: In terms of when any of the decisions were made around the cancellation of the gas plants, did you have any relevant roles? Is there any way you can elaborate on that, if you can? If you can't, you can say you didn't have any part of any decision-making whatsoever.

Mr. Chris Wray: I had no involvement.

Mr. Jagmeet Singh: And I'm assuming, looking at your resumé, that that's what you would have said. Did you have any participation in any decisions regarding the negotiation of the cancellations once they were cancelled and the subsequent discussions that went on between the government and the parties involved?

Mr. Chris Wray: No, none.

Mr. Jagmeet Singh: And were you involved in any of the ministries that were in any way making any decisions

related to before the plants were cancelled, during the cancellation or after the cancellation?

Mr. Chris Wray: As I said in my statement, I worked for the Ministry of Infrastructure in 2010-11, but again I had no involvement in anything to do with these discussions.

Mr. Jagmeet Singh: That's what I anticipated you would answer as well. Just one brief indulgence, Mr. Chair. If you may allow me a brief indulgence?

Mr. Peter Tabuns: If I could—

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, please go ahead.

Mr. Peter Tabuns: You're good at dispensing them, Mr. Chair. You're very good at dispensing them.

Mr. Wray, when you left your positions, then, you didn't make any arrangements for the preservation of your electronic records. Do you know what happened to them?

Mr. Chris Wray: I don't.

Mr. Peter Tabuns: So when you left that position, you were no longer operating the computer that you used in those staff positions, and that computer would pass back into the hands of the minister's staff or the Ministry of Government Services. You may not know what happened, but you simply left it. You didn't clear the hard drive. You just simply left it. Is that correct?

Mr. Chris Wray: Yes.

Mr. Jagmeet Singh: Just a question to follow on that: Were you given any sort of direction in terms of the proper way—say if you were leaving a particular ministry, was there a proper way to close down your files or your computer? Was there a particular protocol with that?

Mr. Chris Wray: I don't remember.

Mr. Jagmeet Singh: It's somewhat important, though. When you would wrap up your service, were there any sort of directions given to you, generally speaking? Maybe not specifics that you can't remember, years ago, but generally speaking, how would you wrap up from one ministry to another?

Mr. Chris Wray: I don't remember any specific direction on what to do.

Mr. Jagmeet Singh: Not specific direction; what about general direction? When you ended your service with a particular minister, would you say, "Okay, take care. I'm done for the day"? How would that happen? You don't have to remember the specifics, but generally speaking, what would happen?

Mr. Chris Wray: I don't know.

Mr. Jagmeet Singh: Interesting.

How many rotations do we have, Mr. Chair?

The Chair (Mr. Shafiq Qaadri): As a committee, you have the opportunity to speak now, and then again in a few minutes.

Mr. Jagmeet Singh: Sure—

Interjection.

Mr. Jagmeet Singh: Could I reserve my time for the next rotation?

The Chair (Mr. Shafiq Qaadri): No, Mr. Singh.

Mr. Jagmeet Singh: Okay, then I'm done for this rotation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. We now move to the Liberal side: Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair. Thank you very much, Ms. MacLeod. Good afternoon, Chris. First of all, I want to note that you're a bit of an historic witness: You're witness number 80. Thank you very much for taking the time to be here today. I don't have too many questions. We can probably go through them fairly quickly. Just to start by setting out the timeline, again, of your employment within the minister's office at the Ministry of Energy: When did you start working there?

Mr. Chris Wray: In March 2013.

Mr. Bob Delaney: March 2013. So you would have come over after the newly formed government.

Mr. Chris Wray: Yes. About a month after the minister was shuffled, I joined him at energy.

Mr. Bob Delaney: So this means, then, that the original estimates motion requesting correspondence related to the gas plants would not have captured you or any of your documents because the motion asked for correspondence up to December 2011. Correct?

Mr. Chris Wray: That sounds right.

Mr. Bob Delaney: Who was responsible for the transition when you made the move from the Ministry of Infrastructure to the Ministry of Energy?

Mr. Chris Wray: What do you mean?

Mr. Bob Delaney: Well, when you left the Ministry of Infrastructure and moved over to the Ministry of Energy, which person to whom you might have reported was responsible for that transition?

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Mr. Chris Wray: You're asking who I reported to when I went to energy or when I left infrastructure and transportation?

Mr. Bob Delaney: Well, let's cover them both.

Mr. Chris Wray: For the month-ish period where I was still at MTO/MOI, I reported to David Black, who took on the role of chief of staff to Minister Murray. When I moved to energy, Andrew Teliszewsky was the chief there.

Mr. Bob Delaney: Okay. Back in August 2013, this committee passed a motion requesting documents from the Ministry of Energy from January 1, 2012, through August 2013. That would be the first committee motion that may have applied to you. Correct?

Mr. Chris Wray: Sounds right.

Mr. Bob Delaney: Okay. Just to repeat some testimony I thought I heard from you, can you confirm, then, that you had—for want of a better term—no seat at the table when it came to any of the decisions relating to the relocation of the two gas plants, nor would you have been a party to, or really had any reason to know about, the negotiations with either TransCanada Energy or Eastern Power when you came to join the Ministry of Energy?

Mr. Chris Wray: That's true, yes.

Mr. Bob Delaney: Okay. Talking about cost estimates that may have been provided to this committee, brought forward or issued by the Ontario Power Authority, were you aware of any discussion to either limit or minimize how costs would be communicated to the public from within the ministry?

Mr. Chris Wray: No.

Mr. Bob Delaney: All right. Would it be an oversimplification to say that you had no experience on this file?

Mr. Chris Wray: No.

Mr. Bob Delaney: Okay. You mentioned that your chief of staff, Andrew Teliszewsky, was the point person in the minister's office on the relocation of the gas plants. Is that also correct?

Mr. Chris Wray: Yes.

Mr. Bob Delaney: Okay. A couple of questions now about record-keeping, and perhaps I can even assist my colleague Mr. Singh in some questions he seemed to be trying to ask: Were you ever directed by any of your former chiefs of staff to delete emails?

Mr. Chris Wray: No.

Mr. Bob Delaney: All right. Former Premier McGuinty testified that there had been a lack of adequate training for staff in this area. In June, he told us, in response to the Information and Privacy Commissioner's report—I'll just take a moment and read one of his quotes—"I agree with the commissioner that despite some efforts, we did not devote adequate resources and attention to ensuring all government staff in all ministries and in the Premier's office were fully informed of their responsibilities. This inadequate training made it difficult for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated."

Would you agree, then, with the former Premier that, at the time, there was a lack of formal training with regard to how to properly manage records?

Mr. Chris Wray: Yes.

Mr. Bob Delaney: That said, to the limit of your ability, did you follow the guidelines in the Archives and Recordkeeping Act?

Mr. Chris Wray: Yes.

Mr. Bob Delaney: When you left your last position, did you turn over your computer with its information intact?

Mr. Chris Wray: Yes.

Mr. Bob Delaney: Okay. It would have been apparent, then, to most staff that you were not required to keep every single record, right?

Mr. Chris Wray: Yes.

Mr. Bob Delaney: In other words, records that would be transitory—here is the umpteenth draft of something—were those that could be deleted. Records that said, "Would you like to attend the going-away party of so-and-so in the ministry?", that type of thing, could safely be deleted.

Mr. Chris Wray: Yes.

Mr. Bob Delaney: Okay. I understand that mandatory staff training took place this spring on records retention. Did you take in that training?

Mr. Chris Wray: Yes.

Mr. Bob Delaney: Did you find it to be useful?

Mr. Chris Wray: Very useful.

Mr. Bob Delaney: Ms. MacLeod, do you have an interjection on something you'd like me to ask here?

Ms. Lisa MacLeod: I'm enjoying your questioning.

Mr. Bob Delaney: All right.

Ms. Lisa M. Thompson: We won't interrupt.

Ms. Lisa MacLeod: It reminds me of good, old-fashioned—

Mr. Bob Delaney: I don't have any questions on the long-term energy act, Chair, so I think I'm going to pause here on this round. Thank you—unless my colleague has something that she'd like me to pass along.

Ms. Lisa MacLeod: You could give me his time—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. He does not have the capacity to do so, but, please, Ms. MacLeod, your time begins now.

Ms. Lisa MacLeod: Thank you. Actually my colleague Lisa Thompson—

The Chair (Mr. Shafiq Qaadri): Oh, sorry. Ms. Thompson.

Ms. Lisa M. Thompson: It's okay. Thank you very much, Chair.

You've identified how the document, the long-term energy plan, was pulled together, and I'm curious about a couple of things. First of all, we know that the decision to cancel the gas plants is around a billion dollars. That's pretty significant. And this decision, this significant decision, was politically motivated. So something of that size is curiously omitted from the long-term energy plan. Why, in your opinion, has that type of initiative, the relocation, the focus on gas, been omitted from the long-term energy plan?

Mr. Bob Delaney: Chair, here again, on a point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order.

Mr. Bob Delaney: I have to ask a procedural question of the Chair. Is it in order to ask a question about a document that's out of order, wondering why something is not in it?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. The mental gymnastics involved there are too convoluted. The floor is yours, Ms. Thompson, and the question is relevant.

You're obviously free to answer as you see fit.

Mr. Chris Wray: I couldn't speculate on that. Again, it's not my file.

Ms. Lisa M. Thompson: Okay. Interesting. Well, changing gears here a little bit, then, can you tell us what you know about the current OPP investigation into the Premier's office that seeks to give us some answers—since a lot of people don't—into the missing emails and documentation around it?

Mr. Chris Wray: Very little.

Ms. Lisa M. Thompson: Very little. So what do you know?

Mr. Chris Wray: I've heard about it in passing, predominantly in the media.

Ms. Lisa M. Thompson: Okay. And what stuck with you? What have you heard about the OPP investigation?

Mr. Chris Wray: I'm aware that there is an investigation—

The Chair (Mr. Shafiq Qaadri): Ms. Thompson, I'll have to redirect that question. It's not relevant. Please proceed to the next question.

Ms. Lisa M. Thompson: Okay. I think I'm pretty much done here. That's fine.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Thompson. Ms. MacLeod, the floor is yours.

Ms. Lisa MacLeod: The only problem is that once I start, then Bob does too.

Mr. Bob Delaney: But we're such a good tag team.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. To the NDP side: Mr. Singh.

Mr. Jagmeet Singh: Returning to my earlier line of questioning, I asked you about when you finished—I'll give you a concrete example. What ministry were you working in before you worked at your current post with the Ministry of Energy?

Mr. Chris Wray: I was working at the Ministry of Transportation.

Mr. Jagmeet Singh: Okay. Roughly when did you finish there?

Mr. Chris Wray: Mid to late March 2013.

Mr. Jagmeet Singh: So not that long ago.

Mr. Chris Wray: No.

Mr. Jagmeet Singh: When you finished there, do you remember anything about your last day?

Mr. Chris Wray: Can you clarify?

Mr. Jagmeet Singh: Do you remember anything about the last day? It's broad. Do you remember anything about the last day when you were there?

Mr. Chris Wray: Yes, I have some memory—

Mr. Jagmeet Singh: Sure. What do you remember?

Mr. Chris Wray: Packing up my office and—

Mr. Jagmeet Singh: Okay. Do you remember anyone speaking to you that day?

Mr. Chris Wray: I would have probably spoken to most of my former colleagues.

Mr. Jagmeet Singh: Sure. Would you have prepared any memos for them?

Mr. Chris Wray: On that day, no.

Mr. Jagmeet Singh: Okay. Previously?

Mr. Chris Wray: Yes. The role of staying back is to help transition new staff and the new minister, so yes.

Mr. Jagmeet Singh: Were you given any direction in terms of helping to transition? Were you told, "Listen, to transition, before you move on to your next role, you should get people up to speed on X, Y and Z things"?

Mr. Chris Wray: Yes. So new staff are coming in. They're taking on files that I had done, and I'm helping them, giving them background and advice.

Mr. Jagmeet Singh: Okay. Then, with respect to your emails and the information that you, over the time that you've been at that particular ministry—what would you have done with those, your records, your emails, the correspondences that you had back and forth? What did you do with those?

Mr. Chris Wray: To the best of my knowledge, I didn't do anything with them.

Mr. Jagmeet Singh: You left them as they were on the computer?

Mr. Chris Wray: Yes.

Mr. Jagmeet Singh: Okay. And you weren't told one way or the other if that was the right thing to do or if there was more to do? You just left them on the computer and left it at that?

Mr. Chris Wray: Yes.

Mr. Jagmeet Singh: Okay. No further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh, and thanks to you—no, we have one more rotation: Mr. Delaney?

Mr. Bob Delaney: Let me make your day, then, Chair. We have no further questions other than to say thank you very much to our witness.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney and Monsieur Wray. Je voudrais vous remercier pour votre présentation et présence. You are officially dismissed.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): We now have a subcommittee report to be read into the record. Signora Albanese.

Mrs. Laura Albanese: Grazie, Mr. Chair.

Your subcommittee on committee business met on Tuesday, February 18, 2014, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013, and recommends the following:

Summary of testimony

(1) That the research officer and the table research clerk provide a summary of testimony of witnesses on the 10th of each month (or the closest meeting date thereafter) for the prior month of testimony received;

(2) That the summary of testimony be broken down by witnesses, as follows:

(a) summary of testimony respecting the tendering, planning, commissioning, cancellation and relocation of the Mississauga and/or Oakville gas plants; and

(b) a summary of testimony respecting the Speaker's finding of a *prima facie* case of privilege.

I move that the subcommittee report be adopted.

The Chair (Mr. Shafiq Qaadri): Comments on this report before adoption? Seeing none, all those in favour? Those opposed? The subcommittee report is adopted as read.

Committee is now adjourned. Thank you, colleagues.

The committee adjourned at 1541.

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Official Report of Debates (Hansard)

Thursday 27 February 2014

Journal des débats (Hansard)

Jeudi 27 février 2014

Standing Committee on Justice Policy

Members' privileges

Comité permanent de la justice

Privilèges des députés



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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 27 February 2014

Jeudi 27 février 2014

The committee met at 0833 in committee room 2.

MEMBERS' PRIVILEGES

MR. CHRIS LEWIS

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, Commissioner Chris Lewis, of the OPP, who will be sworn in by our able Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Chris Lewis: I do so swear.

The Chair (Mr. Shafiq Qaadri): Please be seated, Commissioner Lewis. Welcome to Parliament. I know you are well familiar with the protocol here. You have five minutes in which to make your opening address, followed by questions in rotation. Please begin now.

Mr. Chris Lewis: Thank you, Mr. Chair. Good morning, committee members. It's my pleasure to appear before you here today. I'd like to thank you for the opportunity to inform you about the role of the OPP in this matter that is being reviewed by your committee.

I will outline for you the progress that the OPP's ongoing investigation into the allegation that government emails were illegally deleted. It is alleged that the deleted emails related to the cancellation of the construction of two gas power plants in Ontario. But I want to be clear that the OPP is not investigating the cancellation of the two power plants—just the alleged deletion of emails.

I know, however, that you will appreciate that questions on the specifics of any evidence collected to date, if I answer them, would potentially prejudice the prosecution of any offences that may result from this investigation. There is a significant public interest in preserving the integrity of the criminal investigation and ensuring that any persons that have committed offences are ultimately held accountable for their actions before a court of competent jurisdiction.

As always, any police investigation must respect the charter rights of every person, including the right to not be subject to unreasonable search and seizure, the right to legal counsel and the right to remain silent.

Let me start by bringing you up to date on the OPP's ongoing investigation into the alleged illegal deletion of these emails. In June 2013, two members of provincial Parliament requested an investigation based on reports that emails related to the cancellation of the two power plants had been illegally deleted. If government representatives have reason to believe that a criminal offence has occurred, they file a complaint and the OPP may initiate an investigation.

I can confirm that the OPP commenced an investigation under the direction of a detective inspector from our anti-rackets branch. This major case manager is heading up a team of investigators from our economic crimes section. Additional investigators from the anti-rackets branch are supplementing this team as required. Support staff from our evidence management unit have also been utilized to manage and process evidence seized for review, and OPP investigators have conducted interviews with more than 20 people during the course of this investigation, which has focused on the greater Toronto area and Queen's Park. These interviews have provided the investigators with an understanding of the individual roles and the structure of the former Premier's office, and I am told by our investigators that the OPP is receiving good co-operation from senior government officials in this manner.

I should also mention that Information and Privacy Commissioner Dr. Ann Cavoukian and her staff have also been very helpful to the investigators working on this case.

As you're probably aware, the OPP executed a search warrant last week related to this investigation and seized a number of hard drives from government computers. The investigators are examining these exhibits for items of evidentiary value. As you know, an enormous amount of data can be stored on a variety of devices, such as compact discs, thumb drives and hard drives. It is not unusual for the OPP to seize thousands of gigabytes of information in some of these investigations. This data analysis is a lengthy and complex process, but a thorough review of these exhibits is essential for a proper and complete investigation. This particular effort requires a complex, multi-faceted criminal investigation. I can tell you that the OPP is devoting the necessary available resources coordinated through our major case manager to conduct a complete and thorough investigation into the allegations.

I should point out, though, that our electronic crimes section is currently stretched for resources and each new case creates a bigger workload and backload, so I cannot predict when this intense investigation into the allegedly deleted emails will be finished or whether charges will be laid.

The OPP has investigated crime and corruption offences through our anti-rackets branch since its formation in 1960. The anti-rackets branch consists of police investigators, civilian staff and forensic accountants. The criminal investigative expertise of these teams is often utilized throughout the province in both OPP and municipal police jurisdictions. These cases are often multifaceted and their offences are frequently not easily recognizable. They require dedication and a diverse skill set to bring them to a successful conclusion.

Co-operative partnerships between police, legal experts, information management specialists, information technology specialists and forensic accountants are essential. The complexity of these cases drives the time required to complete the investigations.

The Chair (Mr. Shafiq Qaadri): Loath as I am, Commissioner Lewis, to interrupt the commissioner of the OPP, the time is now expired. I now move to the first line of questioning. Mr. Tabuns of the NDP, you have the floor for 20 minutes.

Mr. Peter Tabuns: Good morning, Commissioner. Thank you for being here today.

Mr. Chris Lewis: Good morning, sir.

Mr. Peter Tabuns: I understand that there are constraints on what you can tell us today, and you've outlined some of that in your opening remarks. Can you tell us how many investigations the OPP currently has under way regarding the Ontario Liberal government?

Mr. Chris Lewis: I cannot state with certainty. Of course, we're still conducting an investigation into the issues around the Ornge ambulance air service and this investigation. Other than that, I don't know any off the top of my head.

Mr. Peter Tabuns: All right. And you said in your remarks that you can't currently give us a timeline on when you expect this investigation to be complete.

Mr. Chris Lewis: I cannot. I never can on an investigation of any kind.

0840

Mr. Peter Tabuns: All right. Would you be willing to provide the warrants that were issued to the OPP with regard to the data centre?

Mr. Chris Lewis: I would not. They've been sealed under court order.

Mr. Peter Tabuns: Which court issued them and which court sealed them?

Mr. Chris Lewis: I do not know.

Mr. Peter Tabuns: Is there anyone in the OPP who would know and could tell this committee?

Mr. Chris Lewis: The officer in charge of the investigation would know. They're sealed under court order so there would be quite a legal discussion around the ability

to turn those over to the committee, but I don't know the exact answer to that.

Mr. Peter Tabuns: Who is the officer in charge of the investigation?

Mr. Chris Lewis: Detective Inspector Paul Beesley.

Mr. Peter Tabuns: Okay. Can you tell us the kinds of charges that you are considering laying in this matter? I'll just preface this by saying that when I read the Archives and Recordkeeping Act, there were no penalties in that act. So clearly it isn't the ARA that's the centre of this. Which sections of law are you relying on?

Mr. Chris Lewis: We're conducting a criminal investigation, so we're looking at the Criminal Code of Canada. I cannot say that charges will be laid. I cannot say that a criminal offence has occurred.

Mr. Peter Tabuns: I understand that.

Mr. Chris Lewis: But certainly in the original complaint there was a reference to a potential breach of trust, criminally. If in fact emails were destroyed, is that destruction of data? Would that fall under a criminal mischief charge within the Criminal Code? I don't know.

I'm in an interesting position as commissioner, in that at any given time we have hundreds of thousands of investigations ongoing—certainly not of the public interest, potentially, of something involving government, but some very serious charges. In fact, we had two people shot and killed last night in the Napanee area of Ontario. So I cannot know all the details of these. In very significant cases like this, I deliberately don't know the details because I don't want to inadvertently say something in the media or at any time that may prejudice the investigation or subsequently hurt a prosecution. I'm sure no one in this room would want that to occur.

Mr. Peter Tabuns: Absolutely true.

Mr. Chris Lewis: I know very high-level details.

Mr. Peter Tabuns: I'll see if you know the next detail. When we first had Information and Privacy Commissioner Cavoukian come forward with her report, we understood that there was a data centre in Guelph and there were computers here at Queen's Park and the Ontario public service. This data company didn't figure in any of our understanding of what was part of the infrastructure for providing data services. What's their relationship to Queen's Park? What services do they provide and why would they have hard drives that were of value to you?

Mr. Chris Lewis: I don't know the exact details of it, but I am aware that computers were being stored at that facility. Through what mechanism or process, I don't know.

Mr. Peter Tabuns: All right. You noted that you had spoken with the Information and Privacy Commissioner. Were they aware that information was being stored at this particular location?

Mr. Chris Lewis: I don't know. I myself was not in communication with the Information and Privacy Commissioner, but I know our investigators were.

Mr. Peter Tabuns: Can you tell us who the primary subjects of your investigation are?

Mr. Chris Lewis: I do not know.

Mr. Peter Tabuns: You've noted previously that the Premier's office has co-operated with your investigation. You said senior—

Mr. Chris Lewis: "Senior government officials" is what I have been told in the briefing that I did receive.

Mr. Peter Tabuns: Did investigators obtain a search warrant to go to the Premier's office?

Mr. Chris Lewis: They did not.

Mr. Peter Tabuns: Would there be any reason that the Premier couldn't tell us that no search warrant was required?

Mr. Chris Lewis: Any government official is in a difficult situation when asked about any ongoing investigation. Even if they do know details, what they want to release publicly and potentially hurt an investigation is another issue altogether. So I don't know what the Premier was told about the visit. I know our officers visited there. It was more looking at the layout in relation to different interviews they conducted and trying to understand the workings of the office physically—what was where, who sat where and that sort of thing. That's all the details I know. I don't know if the Premier would know any more than that, if that.

Mr. Peter Tabuns: So I imagine you can't describe to us in any more detail the visit to the Premier's office.

Mr. Chris Lewis: That's all the details I know.

Mr. Peter Tabuns: Okay. Have any political staff or MPPs declined to be interviewed by your investigators?

Mr. Chris Lewis: I don't know that with certainty, but I'm not aware of any off the top of my head.

Mr. Peter Tabuns: When you say you talked to senior members of government, I assume you've also been talking to senior civil servants. Is that—

Mr. Chris Lewis: Yes. Our investigators would have talked to—whether they be political staff or Ontario public service employees, I don't know; or some of both. I assume only, but I don't know that for a fact.

Mr. Jagmeet Singh: Good morning.

Mr. Chris Lewis: Good morning.

Mr. Jagmeet Singh: In terms of the team that you have working with you, are there any specialists that are involved? To give you an example, in Ornge, because of the nature of the offence that was perhaps being investigated, there were chartered accountants involved in the forensic audit. Similarly, are there any sorts of experts that are being involved in this investigation?

Mr. Chris Lewis: Within the anti-rackets branch, we do have forensic accountants that are on full-time staff. Whether they're engaged in this or not, I don't know. I suspect not, but we do have IT specialists that are technical crime investigators and have the ability to get into digital storage devices, whether it be hard drives or whatever, to retrieve data, which is a very involved process. I know there is some level of engagement by them. I don't know at what stage, but I am told that one of the reasons this is taking as long as it is currently is because of the backlog that they're facing in other cases.

Many of the cases they're investigating involve child luring or sexual exploitation or homicide, so in the priority of things, sometimes those other issues take priority in their work.

Mr. Jagmeet Singh: So in terms of specialists, there are some IT specialists that are involved with data recovery. Any other specialists at all?

Mr. Chris Lewis: I don't know of any others.

Mr. Jagmeet Singh: In terms of the data that's being looked at, were hard drives and other computers seized by the OPP at this point?

Mr. Chris Lewis: I don't know what was seized. If I have even been told, I don't recall. I tend to think there were hard drives, but that's just a guess on my part, based on my limited memory and knowledge.

Mr. Jagmeet Singh: Normally speaking, for any sort of investigation of data or data recovery, is it the normal course to actually seize the physical computer or hard drive to be able to investigate it at headquarters?

Mr. Chris Lewis: It is normal course, yes.

Mr. Jagmeet Singh: And is there anything in your mind that would lead you to believe that this would be anything different in this circumstance, in terms of your IT specialists?

Mr. Chris Lewis: No. If our IT specialists are involved, then, generally speaking, there are hard drives or some sort of storage device involved for them to be looking at.

Mr. Jagmeet Singh: Would you be aware where? Would it be from the Premier's office, would it be from any particular ministry, that the hard drives of computers were seized from?

Mr. Chris Lewis: It could be all of the above. I don't know. The search warrant was actually executed at the facility. I don't know the specifics of that facility, and I know some devices were seized from there. I don't know what they were.

Mr. Jagmeet Singh: In terms of anti-rackets, maybe you could just explain what their specific expertise is, in terms of the types of investigations that they're involved with generally, and what level of expertise they bring to the table.

Mr. Chris Lewis: Our anti-rackets branch is world-renowned. It has been around since 1960. Many of our previous commissioners served in anti-rackets, and some of our deputies. They almost always do financial/economic crime investigations, so they're looking at often fraudulent schemes and illegal movement of funds and things like that, for the most part. But in current years, as we get more and more into the computer and data age, I'm assuming that some of their work has changed, but I'm not familiar enough with it on a personal level to say.

Mr. Jagmeet Singh: In terms of assisting with the investigation with a view to potential charges being laid, are there any particular prosecutors that are being consulted or any legal counsel that are involved or being consulted or participating in any way in the investigation?

Mr. Chris Lewis: There often is, but I can't say that without a doubt in this case. I haven't been told that anyone specifically has.

Mr. Jagmeet Singh: Okay. And generally speaking—maybe not a specific name or a specific prosecutor—are you aware of any prosecutors at all being involved in this particular investigation?

Mr. Chris Lewis: I'm not.

Mr. Jagmeet Singh: Often, we've noticed—and this is something that is somewhat premature at this point in time, and I acknowledge that because we're not sure what the nature is of any charges or if any charges are going to be laid at this point, but at the time when it does become something that you are considering and charges are laid, what is your view with respect to a special prosecutor being assigned to this case, given the political nature and perhaps other sensitivities of this case?

0850

Mr. Chris Lewis: If in fact charges are laid—and there is no indication of that at this point, but if they are, a special prosecutor would not be an unusual request for us. We have done that in the past, in other cases. For example, in the prosecution of even police officers at times, we have consulted outside prosecutors from other provinces in some cases.

Mr. Jagmeet Singh: In this case, applying your experience in other cases that may have some similarities, do you think the special prosecutor or the outside prosecutor would be someone outside the GTA, or would you be looking at someone outside the province?

Mr. Chris Lewis: That would be based on whatever it is they found and whatever the potential charges might be. It wouldn't be uncommon for us to go to another province, or even seek a prosecutor from the Department of Justice federally, once again depending on what the nature of charges are, if in fact they're laid.

Mr. Jagmeet Singh: In the Ornge committee, we were given an indication of a potential report coming forward from the OPP, and then there was follow-up with respect to that, with respect to the type of investigation that's going on in some more detail. Can we expect, perhaps, a report from your end with respect to this investigation?

Mr. Chris Lewis: There will be a report written. Whether it's in the form of a crown brief that ultimately goes to a prosecutor, whether or not we would actually provide anyone else with the report—that would depend, I suppose. I can't make that promise, and there may be some legal reasons around that, whether there would be freedom-of-information issues or not. If it becomes criminal, it's disclosed and that becomes a no-brainer. If it's not, then we will obviously have to explain what we did find or didn't find. But how we turn that over to anyone in a report, I'm not quite sure.

Mr. Jagmeet Singh: As a committee—and I'm sure you're well aware—that's investigating the gas plant and many issues around that, including the email deletions, the record deletions, it's within the purview of this committee to have information regarding that. It would be

fully within the right of this committee to request something of that nature. Now, depending on what you'd be able to provide, it would have to be vetted for certain sensitivities—

Mr. Chris Lewis: Right.

Mr. Jagmeet Singh: But in terms of our authority to look into that type of information, that is exactly what we've been given the mandate to do. Given that, and if we requested something of that nature, would you be in a position to provide us with an update in the form of a report?

Mr. Chris Lewis: I fully understand the powers and authorities of the committee. Something would have to be discussed with a lawyer, because I don't know if there are any overwhelming and contrary legal reasons that we couldn't. Barring none, I don't see that as an issue.

Mr. Jagmeet Singh: Within, or perhaps before, during or even at this point in time of the investigation, has the government, in terms of the Premier, any ministry, or any minister or any other elected official or a staffer, reached out to you on their own initiative regarding this investigation?

Mr. Chris Lewis: Not at all.

Mr. Jagmeet Singh: In terms of the investigation, what are your guiding principles, or the direction you're taking—where is that coming from and what is driving that?

Mr. Chris Lewis: The case manager is responsible to drive the investigation, follow the evidence, follow legal procedures and respect rights under all the various applicable legislation. That is it. We do not give direction to the case manager. The case manager gives direction to the officers who are working with him or her. In this case, it's a him. The individual is highly experienced in various investigative disciplines and it's his call to follow the evidence in the way he sees fit.

Mr. Jagmeet Singh: In your mind, what got the ball rolling, if you will, for the OPP?

Mr. Chris Lewis: It was a letter to me from MPPs Fedeli and Leon, in relation—

Ms. Lisa M. Thompson: Leone.

Mr. Chris Lewis: Leone, sorry. There's an "e" on that. Dr. Leone, I might add—on June 6—

Interjection.

Mr. Chris Lewis: —January 6, 2013, a letter to me, at which time I asked our deputy commissioner of the investigations and organized crime area of our force, which is one of our main commands—it was passed on, and ultimately Detective Inspector Beesley was assigned.

Mr. Jagmeet Singh: Within that letter, what part of that letter, or what particular comments that were made in that letter, prompted you to consider that this might be something that the OPP should look at?

Mr. Chris Lewis: He was alleging that there was a criminal offence of breach of trust, and he quoted another criminal offence—I don't recall off the top of my head what that was—that he believed—or they, as the signatories, believed—may have been committed in relation to the destruction of emails. So we've got senior govern-

ment officials telling us they believe criminal offences have occurred. It's our job, as the provincial police, to conduct an investigation and find out if, in fact, a crime has been committed and, if so, by whom.

Mr. Jagmeet Singh: I'm going to give you a scenario now. If someone was to walk into a provincial library and to tear up books in that library, and to tear up a vast number of books in that library—things that were of public nature and public good—what type of charge, as a police officer, or as a member of the OPP, would you consider laying if you saw—

Mr. Chris Lewis: That would be a criminal charge of mischief, in all likelihood, if, in fact, the individual had no right, no ownership—

Mr. Jagmeet Singh: And no colour of right.

Mr. Chris Lewis: Exactly.

Mr. Jagmeet Singh: Does a similar type of right apply to a digital file? If there are digital files in a computer at a public library and they were destroyed, what charge would you consider in that—

Mr. Chris Lewis: I believe it would be a very similar charge. I don't know the ins and outs of the current legislation, and how it applies to data, but I believe there could be a charge of mischief to data by destroying data that someone else owns and you don't have any colour of right over.

Mr. Jagmeet Singh: Right. Exactly. If we apply that—I know this is somewhat of an area, and if you don't feel comfortable, that's okay. We'll have other questions to get into.

Mr. Chris Lewis: I'll be very honest.

Mr. Jagmeet Singh: If a similar argument could be made that records that were supposed to be kept are the public's records, that assist in oversight and accountability, those type of records being destroyed—does that fit into the same analogy to you?

Mr. Chris Lewis: It may. There are so many what-ifs around that. Are they stored in multiple locations, and only one was destroyed? Are they backed up in some main server somewhere, so the local-level destruction isn't a huge complicating issue? And the reason, the rationale—was it intentional? There are so many what-ifs that would have to be looked at from the legal perspective that are beyond my knowledge and ability.

Mr. Peter Tabuns: Commissioner, just one or two other questions. You mentioned a potential charge of mischief to data. What sort of penalties are tied to these charges?

Mr. Chris Lewis: I don't know. In the big scheme of things within the Criminal Code, it's not right up there with homicide and other offences, but it is a criminal offence. At the bare minimum—I don't know if it's a summary conviction offence, a dual or indictable, so it may be the potential of the maximum of six months in jail, or it could be 14 years. I'm not quite sure where it fits in the Criminal Code.

Mr. Peter Tabuns: That's a big range.

Mr. Chris Lewis: Yes, and I don't know where it fits. Clearly, when you look at the offence—

The Chair (Mr. Shafiq Qadri): One minute.

Mr. Chris Lewis: —then you ultimately would know where it fits in, because generally it will say, “up to 14 years for an indictable offence,” for example, or “six months on a summary conviction.”

Mr. Peter Tabuns: You'd mentioned earlier that you'd interviewed a number of senior people at Queen's Park on this matter. Can you tell us who any of those people were?

Mr. Chris Lewis: I cannot. I don't know.

Mr. Peter Tabuns: Okay. I have no further questions for the moment, Mr. Chair. Thank you, Commissioner.

Mr. Jagmeet Singh: How much time?

The Chair (Mr. Shafiq Qadri): Thirty seconds.

Mr. Jagmeet Singh: Back to the mischief point—if it was mischief under \$5,000, that's one offence—

Mr. Chris Lewis: It's probably a summary conviction, yes.

Mr. Jagmeet Singh: Yes. So mischief under \$5,000 would be summary, and over would be indictable. Depending on the severity of it, depending on what the prosecutor does in terms of the way the charges are treated—

Mr. Chris Lewis: That's right.

Mr. Jagmeet Singh: —it could go indictable or summary.

Mr. Chris Lewis: That's right. How you put an amount or a figure on data, I'm not quite sure.

Mr. Jagmeet Singh: Right, and that's quite difficult.

My colleague must have asked you some questions with regard to this—actually, my 30 seconds are probably up now. I'll come back to it after, in the next round.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Tabuns and Mr. Singh. To the government side: Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair. Good morning, Commissioner.

Mr. Chris Lewis: Good morning.

Mr. Bob Delaney: Welcome. I want to thank you for taking the time not only to be before us today, but also to congratulate you on your impending retirement—

Mr. Chris Lewis: Thank you very much.

Mr. Bob Delaney: —perhaps on behalf of all MPPs, to express envy at your pension.

You've mentioned that this is a very busy time for you, and I very much appreciate you accommodating the committee's request. We understand that you're limited in what you can discuss with the committee during an ongoing investigation. Certainly, on behalf of the government, we do not want to jeopardize an ongoing investigation in any way, and I trust that my colleagues will feel the same.

0900

You were describing to Mr. Tabuns some of the constraints that you face when you're discussing details of this or any other case. What other constraints do you face when you're testifying before a committee such as this?

Mr. Chris Lewis: Well, besides the obvious need and demand to tell the truth, I wouldn't want to identify any

victims of certain offences in investigations. For example, we would never release the name of a sexual assault victim or a domestic abuse victim or things like children who have been victimized.

But my main thought process walking into this or any similar event is that I don't disclose anything that may jeopardize the investigation. In other words, if I was to give some evidence out that I knew may taint someone who has not been interviewed yet—in terms of what evidence they will bring or what their statement would bring—that could hurt the investigation or potentially taint potential jurors if, in fact, something went to trial and it required a jury. Those are issues that are always in the forefront of my mind when I'm being interviewed by the media or in this case.

This is a rare case, to be quite honest, that I would testify anywhere during an ongoing criminal investigation. It's only happened twice in 36 years for me. The other was the Ornge situation, and some of our officers, of course, have had to testify at the inquiry into the Elliot Lake collapse. It's a very difficult situation for us because it runs a very high risk that it's going to hurt the potential co-operation of other witnesses and maybe taint the process.

Having said that, I respect the committee, and all I can do is do my best in terms of saying what I can say and what I can't.

Mr. Bob Delaney: No, I understand. Are there any other risks that are of any particular concern to you in testifying before a committee such as this?

Mr. Chris Lewis: From a liability perspective, I wouldn't want to unfairly identify somebody who maybe had done nothing wrong, and subsequently put a bad light on them. So, I just have to answer honestly and consider all those little issues as I'm thinking of my answers.

Mr. Bob Delaney: Do you have any thoughts on the OPP's relationship with government and politicians in general?

Mr. Chris Lewis: Well, I do for sure. In 36 years, I've never been subject to any party in government, and I've worked closely with all three main parties in this province. At no time ever has there been any pressure put on me to do things or not do things. Contrary to what, sometimes, we read speculatively in the media, that has just never happened. I wouldn't tolerate it. But it has never been an issue for me, from any minister of any party at any time.

Mr. Bob Delaney: So you're not worried about your independence in circumstances such as this?

Mr. Chris Lewis: Not at all. We've arrested and charged members of Parliament in the past, from all three parties, at some point or another, I'm sure. That's just the way life goes.

Mr. Bob Delaney: I appreciate that you're not actively involved in this particular investigation; however, to the best of your knowledge, have there been any roadblocks that have prevented the investigators whom you've assigned from doing their jobs?

Mr. Chris Lewis: Not to my knowledge, no.

Mr. Bob Delaney: Could you confirm that your office has had no interference from any government or Liberal Party member or staff?

Mr. Chris Lewis: I can confirm that I haven't been told of any, and I can also confirm that I would be told if, in fact, that had occurred.

Mr. Bob Delaney: Has there been any interference from any other members of this Legislature while your investigation has been ongoing?

Mr. Chris Lewis: Once again, not to my knowledge.

Mr. Bob Delaney: Commissioner Lewis, I want to thank you very much for agreeing to be here today.

I have no further questions, Chair, in this round.

Commissioner, I want to wish you all the very best in the years ahead, and I hope they're going to be fulfilling ones. I just want to take the opportunity to thank you for your service to the Ontario Provincial Police over these last 35 years.

Mr. Chris Lewis: Thank you, Mr. Delaney.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

To the PC side: Ms. MacLeod.

Ms. Lisa MacLeod: Thank you very much, Mr. Chair.

Welcome, Commissioner.

Mr. Chris Lewis: Good morning.

Ms. Lisa MacLeod: Thank you for taking the time to meet with us today. I understand the constraints that you have. We're actually having a little joke: You've got a lot of shackles on as you appear before this committee, based on your role and the investigation that is ongoing.

As you're aware, my colleagues Rob Leone and Vic Fedeli wrote to you and asked for an investigation for two reasons: (1) As we know, there was an outstanding issue of how much the cancellation of the gas plants cost, and the Auditor General assisted us with that final number; and (2) we wanted to know who ordered not only the cancellation of the gas plants, but also who would have made it difficult for us to uncover the information that we desired. It would be unparliamentary for me to say it was a cover-up, but certainly that is a concern.

I would just like to ask you a number of questions that have come up. We had prepared some, but some of the questions that were asked by the NDP warrant some follow-up. Can you say definitively that a criminal act did not occur in this case?

Mr. Chris Lewis: I cannot say one did or one did not occur, and that's part of the investigative progress.

Ms. Lisa MacLeod: Sure. Can you tell us who the officer in charge of this investigation is?

Mr. Chris Lewis: Detective Inspector Paul Beesley.

Ms. Lisa MacLeod: Mr. Beesley. You had mentioned that resources at the electronic crime unit are stretched. I'm just wondering: What is their role with the anti-racket squad? I know that the anti-racket squad is an elite organization within the OPP; I know it is world-renowned. I'm wondering how they work together, are their resources pooled or shared and if you require more resources at the electronic crime unit in order to

investigate this particular file. Can you elaborate a little bit more on that?

Mr. Chris Lewis: The electronic crime section is separate and apart from the anti-rackets branch. It's part of the same overall investigations and organized crime command that has specialists in a variety of areas. They're a tool for investigators, which may be homicide investigators, drug investigators or, in this case, anti-rackets branch investigators, to help them do what they do, similar to a forensic identification officer who may go to a crime scene and look at blood, take photographs, look for fingerprints and that sort of stuff. They're a tool. So they don't get used in every investigation, but there was a time we had one person in there doing investigations around commercial crime, fraud, movement of funds and that sort of stuff to an era now when we have over 30 in there and we have a caseload backlog of a couple of years.

As cases come in, if there's a public safety priority, like a child being abused or something to that effect, those cases bump up to the top of the queue and some of the other cases fall off. It's just a juggling act for the manager of that section to make sure—in this case, she—has the resources appropriately applied to the investigations, depending on the importance and the severity.

Ms. Lisa MacLeod: Has the electronic crime unit ever, in your knowledge, been deployed throughout anywhere in the provincial government before in this type of an investigation, to recover hard drives?

Mr. Chris Lewis: I don't know that they have or have not—nothing I'm aware of.

Ms. Lisa MacLeod: Is that possible for you to let us know—to have your staff find out for us?

Mr. Chris Lewis: I can try and find that out, yes.

Ms. Lisa MacLeod: Thank you. In terms of the anti-racket squad, perhaps you could elaborate a little bit more not only for the members of this assembly, but I know there's a lot of media here, so there are people at home watching. Can you elaborate a little bit more—I know you talked briefly about what some of the things are that the anti-racket squad does. Can you highlight a few of the cases in the past that Ontarians might be familiar with where the anti-racket squad has gone in and done an investigation?

Mr. Chris Lewis: They've done many investigations, even some within the federal government, and conducted investigations into the RCMP where there were allegations of criminal fraud.

For many years, the anti-rackets branch virtually investigated nothing but fraud, whether it be financial crimes or fraudulent schemes. As the years went on, they got into credit card investigations, theft of identity investigations and then, more in recent years, fraudulent schemes. Economic and financial crimes have kind of grown because the technology—

Ms. Lisa MacLeod: Are there any ones that folks would be familiar with that you can think of right off-hand?

Mr. Chris Lewis: Oh, huge land fraud schemes in the city of Toronto years ago; the Church of Scientology investigation we had many work on for many, many years.

Ms. Lisa MacLeod: That explains everything: Dalton McGuinty and the Church of Scientology. No?

Mr. Bob Delaney: Chair, on a point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, a point of order.

Mr. Bob Delaney: Chair, I object to this attempt to use innuendo in something that's completely unrelated. Ms. MacLeod knows that she's really straying from here.

Mr. John Yakabuski: Thank you for your point of order.

Mr. Bob Delaney: And it is a point of order. Thank you.

0910

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Ms. MacLeod, I would invite you to return to the scope of the committee.

Mr. John Yakabuski: Turn your sense of humour off, please.

Ms. Lisa MacLeod: I'm going to turn my sense of humour off; I have to do that every once in a while with Bob.

We had indicated, through my colleagues Vic Fedeli and Rob Leone, that under section 122 of the Criminal Code of Canada, a breach of trust would carry a maximum penalty of five years. Under section 341 on fraudulent concealment, which I think would probably carry a maximum penalty of two years—is that consistent with what you're suggesting as well?

Mr. Chris Lewis: If you say that is what it is, I believe that. I just don't know off the top of my head.

Ms. Lisa MacLeod: Thank you. That's a really good validation for a politician. I'm just going to say to my friends in the media: If I say it, it must be true, because the OPP commissioner has just validated that.

That, to me, is quite interesting. You had indicated that you cannot say whether or not a criminal act did or did not occur.

Mr. Chris Lewis: I cannot.

Ms. Lisa MacLeod: However, if a criminal act did occur, those who are being investigated could carry either a maximum penalty of five years for breach of trust or two years for fraudulent concealment.

Mr. Chris Lewis: Maximum penalty? Yes, as you've described, that makes sense.

Ms. Lisa MacLeod: So people could go to jail over this. That, I think, is quite interesting, and I think it's quite important to know.

You had mentioned at one point, when the NDP were talking about a special prosecutor or a special investigator, that it was also possible that the federal department of justice could be called in. Who would do that? Would that have to be a political decision based on the Premier's office or would that be a decision on recommendation by the OPP who would be investigating this? I'm just wondering.

Mr. Chris Lewis: That decision would be our decision to go that way. We would never be directed to go that way. We're never directed on how to proceed in any way, from a legal perspective, by a government in criminal matters.

Ms. Lisa MacLeod: And a government couldn't prohibit you from taking that step to seek a federal investigator or a federal prosecutor?

Mr. Chris Lewis: I don't think there's any privilege that allows them to prevent us; I don't know. There may be something, from a legal perspective, that I'm not aware of, but it has never become an issue when we've decided to go that route, ever.

Ms. Lisa MacLeod: Could you lay out the process by which that would occur? Is it a simple—do you contact the justice department federally or do you go through the federal court system? How does that work?

Mr. Chris Lewis: We'd ultimately have to—and I'm only guessing; I've never had to do it myself, but I know that it has been done many times. We'd have to make the request. I'm sure that, out of respect for the Ministry of the Attorney General in this province, we'd have some dialogue with the director of crown law criminal to say that we're going this route so that it's not something that he or she reads in the paper, and there may be specific people that we should go to, based on some relationship or agreement between Ontario and the federal government. I don't know. But I know that in many cases, over the years, our officers have made that decision and it has happened. The exact mechanics of it, I can't spell out for you.

Ms. Lisa MacLeod: When you met with MPPs Fedeli and Leone, you decided to take some steps to investigate and then initiated a search warrant. Would there be discussions—and you can answer this as generally as possible, because I'm trying to frame this in my mind—on what the possible results would be in the various scenarios and how to best approach any charges that might be laid or any reports that needed to be filed? In terms of what the next steps would be, would you be investigating the possibility of a special investigator or a special prosecutor or turning this over to the feds, or are these options that you know are out there, but you really haven't explored? In terms of the process, I'm just wondering if I can get a sense of that.

Mr. Chris Lewis: I never met with the MPPs myself. I've met them informally over the time since, but it was strictly a letter from them to me. The investigator was assigned through our own process internally, and I assume the investigator would have met with them to hear what they had to say, in addition to what they put in writing. Whether they had discussions around those options of a special prosecutor, I have no idea; I'd only be guessing.

Ms. Lisa MacLeod: I have two quick questions on the number of people. I know you've spoken with my colleagues Vic Fedeli and Rob Leone. I'm wondering about two things: One is that you had mentioned, I think, briefly—and I thought I had written it down and I

didn't—how many people you had spoken to. Is that over 20?

Mr. Chris Lewis: Yes.

Ms. Lisa MacLeod: And are we able to find out, maybe not their names, but certainly what types of positions they hold or what they've previously done with the government? Are you able to shed any light on that?

Mr. Chris Lewis: I don't have a clue.

Ms. Lisa MacLeod: Okay. In terms of your investigators, how many people do you actually have working on this file, or does that change throughout this entire process?

Mr. Chris Lewis: It's very fluid. There's only a handful of investigators in this case, but at times they're supported by others, depending on what they're doing. For example, executing a search warrant, you would normally bring more officers to shorten the time of the actual search potentially. If you're conducting an investigation, sometimes you have a number of people deployed on a given day, but that's not a huge number of people. So just a handful of people, as a rule.

Ms. Lisa MacLeod: Right. In terms of when you visited the Premier's office, and you had indicated there wasn't a search warrant, there had to have been an invitation by the staff, or was there a contact made from the OPP requesting a visit to the Premier's office when that occurred?

Mr. Chris Lewis: I believe that it was just a contact. It was requested by us and the co-operation was received, but it was not an invitation, to my knowledge.

Ms. Lisa MacLeod: Okay. So her office would have known that you had requested to be there.

Mr. Chris Lewis: Someone from her staff would have known, yes. We didn't just show up. It was arranged to be done at the end of the business day, as opposed to in the heart of the business day.

Ms. Lisa MacLeod: Are you able to allow us that information on who that contact person was in the Premier's office?

Mr. Chris Lewis: I don't know who it is.

Ms. Lisa MacLeod: Is it possible to find out? Are you able to share that?

Mr. Chris Lewis: I can find out.

Ms. Lisa MacLeod: Okay. We'd appreciate that. That would be very helpful.

The next question I have is going back to these data centres in Mississauga. Perhaps I heard wrong, but I think in one of the rounds of questioning by the NDP you had said that there could be other servers or other sites. Is that possible?

Mr. Chris Lewis: Well, no. Just in general, when you're conducting an investigations, whether or not I said something about if data is destroyed on one hard drive, does that mean it's not stored on another, or in a server somewhere? But that was a general question as opposed to relating specifically to this case.

Ms. Lisa MacLeod: I see. Okay.

Mr. Chris Lewis: But there is the Guelph data centre that houses all the servers for—I shouldn't say "all," but

most of the servers for the Ontario public service. The facility in Mississauga: I'm led to believe that it was just a storage facility of some sort where the hard drives were stored, as opposed to being active as part of a network or a system, but just sitting.

Ms. Lisa MacLeod: Interesting. In terms of the co-operation you would have received or would not have received at the data centre in Mississauga, would, at any time, they have been contacted previous to the search warrant?

Mr. Chris Lewis: I have no idea. There may have been some investigation as part of the development of the search warrant application, some confirmation that, "Yes, we have hard drives piled here on a pallet," but regardless of co-operation in a case like that, the officers would want to obtain a search warrant, just so no one could ever say later that, "Well, I didn't know they were going to take them." It's clean; it's the proper process. But you have to have grounds to ultimately have information sworn to—that there is material there that is germane to this criminal investigation. So potentially, there was contact before to verify that it was there. Somebody obviously told them it was there.

Ms. Lisa MacLeod: Is this the first search warrant that has ever been issued against a sitting government?

Mr. Chris Lewis: I don't believe it has, but I don't know of the others.

Ms. Lisa MacLeod: Okay. It's so hard because we can't ask you specific questions and we have so many of those. It's trying to figure out the process so we can get answers as a result of that.

Can you comment, at any point in this investigation, if the parties that have been subject to the investigation—have they been co-operative? In other words, the 20 folks who have been investigated—have the people who house the data been helpful, or have you run into any sort of obstruction, as the privacy commissioner did, throughout your process of investigation?

Mr. Chris Lewis: I'm not aware of any obstruction. I was told in a general sense that we received co-operation. Sometimes some people are more co-operative than others, but I don't know details of any of that.

Ms. Lisa MacLeod: Okay. How much time do I have left, Chair?

The Chair (Mr. Shafiq Qaadri): About five minutes.

Ms. Lisa MacLeod: About five minutes? I'm loath to give up the time, but you've given me a lot more to think about. So at this point, I have no further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. To the NDP side: Mr. Singh.

Mr. Jagmeet Singh: Thank you so much. I just want to turn your mind back to the search warrant and just ask you some general questions about a search warrant, just to put it into perspective.

To be able to get a search warrant in the first place, there has to be certain information that's laid out in an application, and that application has to include criminal charges that are the subject of this search warrant: what

charges you hope to—or potentially may be laid. Is that correct?

0920

Mr. Chris Lewis: That's correct.

Mr. Jagmeet Singh: There are grounds for why you think the search warrant would produce information or evidence that could assist in the laying of those charges.

Mr. Chris Lewis: That's correct.

Mr. Jagmeet Singh: And this information is compiled and then presented to either a justice of the peace or a judge, who then provides the authorization.

Mr. Chris Lewis: That's correct.

Mr. Jagmeet Singh: Sometimes in search warrants, there's information that's relied on from a confidential informant.

Mr. Chris Lewis: That sometimes is the case, yes.

Mr. Jagmeet Singh: Was that the case in this case, that you relied on a confidential informant?

Mr. Chris Lewis: I have no idea of that.

Mr. Jagmeet Singh: Okay. Are you aware if this search warrant was signed by a JP or by a judge?

Mr. Chris Lewis: I am not aware of that either.

Mr. Jagmeet Singh: In terms of the information to obtain—that's the information that you need to present to a judge or a JP to get the search warrant—

Mr. Chris Lewis: Right.

Mr. Jagmeet Singh: —the specific charges that are listed—you don't know the specific charges that were laid out in the ITO?

Mr. Chris Lewis: I do not know.

Mr. Jagmeet Singh: In terms of the search warrant itself, you indicated that it was sealed?

Mr. Chris Lewis: Yes.

Mr. Jagmeet Singh: Can you provide the reason why it was sealed?

Mr. Chris Lewis: It's very common that it is.

Mr. Jagmeet Singh: It is, but is there—

Mr. Chris Lewis: Yes, it is, and what the rationale for it was in this case, I do not know.

Mr. Jagmeet Singh: In terms of the—

Mr. Chris Lewis: If I could just add, Mr. Singh, presumably often the reason it is sealed is because if the details within the information to obtain or any of those details around that get out into the public realm, that potentially affects other witnesses and may somehow jeopardize the integrity of the investigation.

Mr. Jagmeet Singh: Okay.

Mr. Chris Lewis: That's most often the reason that occurs. In any investigation, as you follow the evidence, you don't know who you're going to interview next, and if that individual just read an article in the paper with all the details from your information to obtain, is that interview going to be accurate? What the impacts are, positively or negatively, on that interview become problematic for us.

Mr. Jagmeet Singh: In terms of the investigation itself, if you can give a percentage, how far along into this investigation are you: 50% of the way, 70% of the way; is there much more to go; is it wrapping up?

Mr. Chris Lewis: I cannot say. I could say we'd be done tomorrow and tonight we'll find out we have 50 more people to interview and I become a liar, so I really don't have a clue, and I deliberately don't have a clue.

Mr. Jagmeet Singh: Okay. Just to put this into perspective, just to understand what's going on here, we have a search warrant that's specifically a criminal search warrant that was executed, and there are some potential charges that could come out of this, but you are not in a position to say that a charge is being contemplated one way or the other at this point in time.

Mr. Chris Lewis: I cannot.

Mr. Jagmeet Singh: And some of the potential charges are anything from a breach of trust to the destruction of public records, anywhere in that vicinity. Those are potential options that could come out of this.

Mr. Chris Lewis: Those are options that our investigators would be looking at to determine whether one of those or some other criminal offence has occurred, followed by, if so, by who?

Mr. Jagmeet Singh: And if one of those offences is made out, then we would potentially see people being charged with offences that could lead to some serious jail time?

Mr. Chris Lewis: Well, yes. As defined by the other member, their maximum penalty could be a range of five or two years, depending on the offence.

Mr. Jagmeet Singh: Depending on the offence, of course.

Mr. Chris Lewis: That's the maximum penalty.

Mr. Jagmeet Singh: That's right.

Mr. Chris Lewis: But that's a decision for the courts to make.

Mr. Jagmeet Singh: Of course, and really only at this time, your job and your role is to basically investigate whether or not an offence has occurred and then take the evidence that you have gathered and collected and provide it to an attorney, who will then prosecute it, and ultimately a judge makes a decision whether or not someone is found guilty or innocent.

Mr. Chris Lewis: Yes, sir, that's exactly it.

Mr. Jagmeet Singh: Okay. I just wanted to understand some more details around the scope of the investigation. Are there further interviews that are scheduled or that are anticipated at this point?

Mr. Chris Lewis: I do not know.

Mr. Jagmeet Singh: Are there further search warrants that are being applied for, and are you anticipating any further searches?

Mr. Chris Lewis: I don't know that either.

Mr. Jagmeet Singh: To date, we've heard of one search warrant. Were there others, or was there simply that one so far?

Mr. Chris Lewis: I'm only aware of that one.

Mr. Jagmeet Singh: Okay. Beyond that search warrant, there were interviews that were conducted, and so far, you said 20 people have been interviewed.

Mr. Chris Lewis: That's correct.

Mr. Jagmeet Singh: That's up until what time?

Mr. Chris Lewis: That's up until me getting here today.

Mr. Jagmeet Singh: Okay. In terms of the nature of the various investigations that you're conducting as the OPP, I would submit that this is quite important, that our government is accountable and is not conducting activity that could be criminal. I would like this to be considered something quite serious in priority. Where does it fall, right now, in terms of the priority for the OPP?

Mr. Chris Lewis: I guess the investigators would know better, but if, in fact, it was an ongoing criminal offence, that changes things. There's no suggestion of that. If someone did commit a criminal offence, do they still work for the government or for the party? I don't know. There are a lot of factors there. I'm just considering in my mind, if I was the lead investigator in this, what I'd be looking at. Is somebody's life in danger? Is someone about to be victimized? Those really change our priority levels. If you're responding to a break and enter and a call of an assault on a child comes in, you obviously leave the break and enter and you go to the assault of the child.

These are issues and balances that we have to deal with every day, because we just are never going to have—nor should we—enough people to respond to everything at once and do it all right away. So in the world of priorities, I trust the deputy commissioners, who trust the people that report to them, to give it the proper level of priority. That changes; it's a fluid thing. It could change tomorrow if, God forbid, we had another significant occurrence of some sort where people were killed or lives were threatened.

Mr. Jagmeet Singh: Right. You've indicated that there's a Guelph data centre. Obviously, there's the data and the hardware and the actual offices themselves. Were there other locations or sites that you've contemplated or that you have searched?

Mr. Chris Lewis: I'm not aware of any.

Mr. Jagmeet Singh: Okay. In terms of the next steps moving forward, is there any sort of timeline you can provide us with at this time in terms of when you anticipate, roughly, that your investigation will be completed or roughly when you'll be in a position to say, one way or the other, whether or not there are charges that can be laid?

Mr. Chris Lewis: I cannot even estimate that.

Mr. Jagmeet Singh: Okay. I'm just going to throw up some numbers. Months? A year? Multi-year? Any sort of range that you can provide.

Mr. Chris Lewis: I don't know. Certainly, they'll do it as quickly as they can and as effectively as they can. That's their role and their job, and I have every confidence that they're not sitting drinking a margarita and not actively working on this. But once again, priorities being what they are, getting the data out of anything they seized; who to interview after that; does that lead to maybe more search warrants somewhere—that's all very speculative. I don't have a clue where it may go, so I can't even hazard a guess.

Mr. Jagmeet Singh: Okay. Just a moment's indulgence.

Thank you very much, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side: Mr. Delaney.

Mr. Bob Delaney: We have no questions, Chair. Thank you, Commissioner Lewis.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Back to the PC side: Ms. MacLeod.

Ms. Lisa MacLeod: Thank you very much. I was really concerned about the line of questioning by the Liberals. I'm surprised they didn't take the opportunity. Commissioner, to your knowledge, has the OPP ever conducted an investigation into the office of a sitting Premier?

Mr. Chris Lewis: To my knowledge, no.

Ms. Lisa MacLeod: To your knowledge, is this the first time an OPP investigation included a physical search of a sitting Premier's office?

Mr. Chris Lewis: It was not a search of the Premier's office, just to correct the record. It was a visit on agreement, co-operatively done after hours to not disrupt the daily flow of business in the Premier's office. It was very much just to look around and kind of understand the layout and how the process—

Ms. Lisa MacLeod: So you looked around; you didn't search.

Mr. Chris Lewis: No. They weren't going through desk drawers. It wasn't that sort of thing.

Ms. Lisa MacLeod: Okay; they were looking around.

Mr. Chris Lewis: There was no search warrant. They weren't actively looking for evidence. It was described to me as more of a familiarization exercise.

Ms. Lisa MacLeod: Is this the first time there has been a familiarization exercise in the Premier's office?

Mr. Chris Lewis: I don't have a clue.

Ms. Lisa MacLeod: But to your knowledge, no.

Mr. Chris Lewis: Not since I've been commissioner.

Ms. Lisa MacLeod: That's a new one: a familiarization. Okay. There we go.

Mr. Chris Lewis: That sort of thing isn't uncommon—where you want to go and have a look at something. It may be a field where something occurred and you want to look at it and kind of get a sense for—

Ms. Lisa MacLeod: Like a first date.

Mr. Chris Lewis: When the witness told me he walked west, where did he walk from? That sort of thing is quite common. It's just not always an office per se.

Ms. Lisa MacLeod: Okay. Can you perhaps give us an explanation of how the investigation process works? We've had this familiarization tour. We've now had a search warrant. Are there any obligations and co-operative mechanisms in place that require any of those who are being investigated—the previous Premier's office staff or the current Premier's office staff. Are there any mechanisms in place to compel them to comply, or any obligations that they have?

0930

Mr. Chris Lewis: In a criminal investigation, when we're conducting interviews of people, there's certainly a duty to co-operate within their rights—the right to not have to incriminate yourself and things of that nature that are protected rights under the Charter of Rights in legislation. There's no obligation on our part to go back and talk to anybody unless we see fit. For example, if, in fact, the examination of evidence shows something that would make our investigators want to either re-interview someone they've interviewed or conduct a new interview, that's all part of that investigative process.

Ms. Lisa MacLeod: And if somebody is uncooperative in your investigative process, what's the process then?

Mr. Chris Lewis: It's difficult to define uncooperation versus potentially someone lying and maybe steering the police in a false direction knowingly, which may ultimately result in an obstruct-police type of offence being committed. I'm not suggesting that here at all, but that's just a normal course of investigations. I'm not sure if I answered the question for you or not.

Ms. Lisa MacLeod: Yes. The logical next step, though, is: Has everybody that you have investigated, or your force has investigated, at this present moment, been co-operative with the OPP?

Mr. Chris Lewis: Once again, I don't know that every single person has been 100% co-operative; I can never say that. But I'm certainly not aware of any uncooperative individuals at this point. Once you examine evidence in a case, sometimes you find that people whom you believe to have co-operated weren't co-operative. But I'm not suggesting that here at all, either. That's part of the investigative process.

Ms. Lisa MacLeod: At what point of the investigative process do you look at the various reports filed by your investigators from their interviews with those who are being investigated, to compare notes to see who has been more or less truthful and who has been more or less evasive?

Mr. Chris Lewis: That happens on an ongoing basis. Every time a statement is taken, investigators, as soon as practical, would be looking at: What does this person say about other events or other witnesses, and then comparatively, does it all flow together? Just for example, in a criminal investigation you may have someone say, "Well, I wasn't there." And then you interview three others and they say, "She was there." Then you go back to the person and say, "Okay, so-and-so told us you were there." Sometimes they say, "Okay, you got me," and other times they don't. Like just in the course of any investigation, you run into those ebbs and flows, so to speak.

Ms. Lisa MacLeod: And then people remember where they were after they've been in the second or third time?

Mr. Chris Lewis: Sometimes yes and sometimes no.

Ms. Lisa MacLeod: Okay. We talked a little bit about breach of trust, a five-year sentence, and fraudulent concealments—two years. We, our caucus, through Vic

Fedeli and Rob Leone, had originally suggested those two penalties: breach of trust and fraudulent concealment. You had mentioned today that criminal mischief could be a possible charge as well. That comes with a maximum penalty of up to 14 years.

Mr. Chris Lewis: I don't know that.

Ms. Lisa MacLeod: I do. I just had the federal justice department send me a little note on that during our—

Mr. Chris Lewis: Well, once again, I believe you.

Ms. Lisa MacLeod: So there are some possibilities for very stiff penalties here if there is a criminal charge.

Mr. Chris Lewis: Yes. Once again, it's up to the courts, and the maximum penalties as what you've said.

Ms. Lisa MacLeod: I just have two further questions, and I'll leave it at that, because the reason I brought the penalties up and what those sentences could be is that I want to be very clear that for a search warrant to be executed, there needs to be clear evidence that a criminal act could have occurred. Is that true?

Mr. Chris Lewis: Yes, within reasonable, probable grounds that a criminal offence did occur.

Ms. Lisa MacLeod: So there are reasonable and probable grounds today in Ontario that a crime may have existed with respect to the deletion of emails on the ongoing investigation of the cancelled gas plants in Mississauga and Oakville.

Mr. Chris Lewis: I'd ask you to repeat that again. I'm not trying to be difficult. I don't want to agree to something that I'm not 100%—

Ms. Lisa MacLeod: Yes. Effectively, if a search warrant has been executed, there's a reasonable possibility that a crime has existed.

Mr. Chris Lewis: To get a search warrant, there would have to be a reasonable belief that something had occurred of a criminal nature.

Ms. Lisa MacLeod: Okay. And so interviewing over 20 people led to this search warrant?

Mr. Chris Lewis: That's correct.

Ms. Lisa MacLeod: Okay. Were those interviewers recorded, and can we have access to those records?

Mr. Chris Lewis: Well, they're evidence in a criminal proceeding, and so what the ability of the committee is to get access to that, I don't know. That would be for minds greater than mine to decide. They are always recorded in

investigations, either in writing or audio and/or video, sometimes all of the above. But that would be at the discretion of the investigator.

Ms. Lisa MacLeod: Okay. In the final question, I'm just going to do a summary and then ask the question. So we've now established that 20 people have been investigated—

Mr. Chris Lewis: Interviewed.

Ms. Lisa MacLeod: Interviewed. Those interviews led to a search warrant, which leads to a possibility that there has been a crime committed. That is probable. That led to the search warrant being executed because there was clear evidence that a crime could have been committed, and that could mean a breach of trust with a maximum sentence of five years, fraudulent concealment with a maximum penalty of two years, and mischief of up to 14 years. It's clear that the investigation is very much alive.

Mr. Chris Lewis: It is.

Ms. Lisa MacLeod: And it's ongoing.

Mr. Chris Lewis: It is.

Ms. Lisa MacLeod: And criminal charges could be laid?

Mr. Chris Lewis: That's correct.

Ms. Lisa MacLeod: Okay. Thank you very much.

Mr. Chris Lewis: The criminal charges are certainly a possibility; otherwise, they wouldn't have gotten a search warrant.

Ms. Lisa MacLeod: Thank you very much. It's been a pleasure. Happy retirement.

Mr. Chris Lewis: Thank you.

Ms. Lisa MacLeod: Maybe we'll call you back after you've left the OPP just for a reunion.

Mr. Chris Lewis: I'll be the guy with the beard and the earrings, yes. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. Once again, Commissioner Lewis, on behalf not only of members of the committee but on behalf of Parliament, the Premier and the people of Ontario, we thank you for your more than 35 years of service.

Mr. Chris Lewis: Thank you, sir.

The Chair (Mr. Shafiq Qaadri): The committee is adjourned.

The committee adjourned at 0937.

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Mardi 4 mars 2014

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 4 March 2014

Mardi 4 mars 2014

The committee met at 1502 in room 151.

MEMBERS' PRIVILEGES

MR. PHILIP DONELSON

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, Philip Donelson, policy adviser of the office of the Minister of Energy, who will be affirmed by our able Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Philip Donelson: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Donelson. I know you know the drill. You have a five-minute opening address. I'd also pass on greetings on behalf of the Clerk for the one-year anniversary of the justice policy committee and these hearings.

Your time begins now.

Mr. Philip Donelson: Thank you, Chair and honourable members. My name is Philip Donelson, and I'm a policy adviser to the Honourable Bob Chiarelli, Ontario's Minister of Energy. I'll make some brief comments about my time in government, and I'll be happy to respond to your questions to the best of my ability.

I've had the privilege of working for Minister Chiarelli since September 2012, when I joined his staff as legislative assistant and issues manager during the minister's time at the Ministries of Transportation and Infrastructure. When the minister was shuffled to the Ministry of Energy in February 2013, I remained at transportation and infrastructure for approximately one month to assist in the transitioning of the new office before rejoining Minister Chiarelli at the Ministry of Energy.

Prior to my time in Minister Chiarelli's office, I served in the office of MPP Leeanna Pendergast from 2009 to the summer of 2011 part-time while attending the University of Toronto.

My time with the Ministry of Energy has consisted of two roles: first, as a legislative assistant and issues manager; and, presently, as a policy adviser to the minister.

As a policy adviser, my files generally include regulatory issues in relation to our agencies and local distribu-

tion companies around the province, strategic planning for our energy agencies, and First Nations and Métis engagement.

I'm very proud of what we have accomplished over the past year under Minister Chiarelli's leadership, to bring a balanced, pragmatic and collaborative approach to energy policy in the province.

As my chief of staff testified before this committee, matters in relation to the 2010 and 2011 relocations of the Oakville and Mississauga gas plants, including the Auditor General's reports, have been handled by my chief of staff since Minister Chiarelli assumed office. My only work in relation to the issue was as legislative assistant, when I would brief the minister on issues in preparation for question period.

With regard to document disclosure requests from this committee, our office received two motions requiring us to perform searches for documents. Our office followed the directions provided by the Ministry of Energy, developed in collaboration with Cabinet Office, to search for and disclose all relevant records. In his appearance before the committee, my chief of staff outlined this process in further detail.

With that, I will do my best to answer any questions you may have related to my time at the ministry.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Donelson. To the PC side: Ms. MacLeod.

Ms. Lisa MacLeod: Thanks very much, Chair. I'll be splitting my time with my colleague Mr. Yakabuski.

Mr. Donelson, thanks for joining us here today at the gas plants committee. As you probably heard when we were off-record, this is the one-year anniversary of the committee. In many respects, we've uncovered a lot of information; in others, we're still digging. So we appreciate your attendance here today.

I'd like to just ask how you prepared for this interview prior to coming here. Did you work, for example, with your chief of staff, anybody in the Premier's office, and had you spoken at all, at any length, with your minister about this before appearing here today?

Mr. Philip Donelson: Sure. I prepared my own opening statement; I wrote it myself. In preparation for my appearance today, I reviewed previous testimony of my colleagues in the Ministry of Energy, and the minister's testimony. I spoke with some of the issues and communications staff in our office about how the committee works and what to expect from today.

Ms. Lisa MacLeod: Yes. Did you do any sort of preparation, almost a debate simulation or a simulation of the committee?

Mr. Philip Donelson: Nothing like that. It was just very high level.

Ms. Lisa MacLeod: You spent some time in the minister's office and then you left briefly. Is that correct? Is that what I heard? After Leeanna Pendergast's office, you—

Mr. Philip Donelson: No. I was doing my master's at the University of Toronto at that time, so I had left her office, I think, at the beginning of the summer in 2011. After I completed my degree, I came back to Queen's Park and joined Minister Chiarelli's office.

Ms. Lisa MacLeod: It says here that you left for a brief time, or is it just a role change that you had? It said: "Legislative assistant and issues manager, Government of Ontario, Office of the Minister of Energy," and then you became a policy adviser. So that would have been a promotion. Is that how, in your bio—

Mr. Philip Donelson: That's correct.

Ms. Lisa MacLeod: So you've been uninterrupted with Minister Chiarelli during that period of time.

Mr. Philip Donelson: Yes. Just to clarify, I stayed at the Ministries of Transportation and Infrastructure for about a month after transition in February, just to assist in the transition.

Ms. Lisa MacLeod: Okay. Your current title is policy adviser, regulatory affairs and strategic policy.

Mr. Philip Donelson: That's correct.

Ms. Lisa MacLeod: So presumably, you would have handled the issues file during the early days of the gas plants review. Can you provide us with any insight into the ministry dealings with not only the gas plants at Mississauga and Oakville but how you would deal with the OPA and the Premier's office? Because those are some very heavy issues.

Mr. Philip Donelson: On the issue of the gas plants, as my chief of staff testified, he held carriage of this file for the ministry.

Ms. Lisa MacLeod: He, and solely he, looked after the gas plant file.

Mr. Philip Donelson: That's correct, yes.

Ms. Lisa MacLeod: And at no point in time, for example, would you have provided the minister with talking points or issues notes into the House as a result of responses to the questions that I or any of my colleagues would have asked?

Mr. Philip Donelson: In my role as legislative assistant, I would brief the minister before question period each day and work on his House book notes for all issues.

Ms. Lisa MacLeod: Would you consider this to be an issue, though, the gas plants?

Mr. Philip Donelson: Yes.

Ms. Lisa MacLeod: So you would have prepared House notes for the minister?

Mr. Philip Donelson: Yes, I would have.

Ms. Lisa MacLeod: When those House notes were prepared, were they vetted by anyone?

Mr. Philip Donelson: No.

Ms. Lisa MacLeod: No? So you just prepared them, and your chief of staff wouldn't look at them or, for example, somebody in the House leader's office or the Premier's office wouldn't look at them? There were no—

Mr. Philip Donelson: I mean, it's common practice for anybody in the role of legislative assistant to share House book notes with the Premier's office, for instance, but that's just purely information sharing.

Ms. Lisa MacLeod: At any time, would the House notes that you provided to the Minister of Energy have ended up in the Premier's House notes?

Mr. Philip Donelson: I wouldn't have any knowledge of that.

Ms. Lisa MacLeod: You wouldn't have any knowledge of that.

Mr. Philip Donelson: No.

Ms. Lisa MacLeod: At any point in time, for example, did her director of policy or anyone else in her office, whether it was an issues manager or her own chief of staff or deputy chief of staff, ever look at one of your House notes and ask for clarification on matters?

Mr. Philip Donelson: I don't have any specific recollection of that occurring. I couldn't say.

Ms. Lisa MacLeod: Can you let me know this: It's frequent in governments that issues managers get on the phone, perhaps once a day or a couple of times a week, to discuss major issues. I'm just wondering: At any time, did you ever participate on a government-wide call of issues managers from the various ministries and ministers' offices?

Mr. Philip Donelson: Yes.

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Ms. Lisa MacLeod: Who would typically spend time on those calls?

Mr. Philip Donelson: It's common for legislative assistants to have a conference call just to check in with one another.

Ms. Lisa MacLeod: At any time since you have become a member of the minister's staff, did you participate in any of those calls?

Mr. Philip Donelson: Yes, I did.

Ms. Lisa MacLeod: When would you have participated in them?

Mr. Philip Donelson: They occur regularly.

Ms. Lisa MacLeod: Daily or weekly?

Mr. Philip Donelson: Daily, yes.

Ms. Lisa MacLeod: So you would participate frequently?

Mr. Philip Donelson: Yes.

Ms. Lisa MacLeod: So this would be something you normally and naturally do. Who would lead those discussions? Someone from the Premier's office?

Mr. Philip Donelson: Typically, the issues staff in the Premier's office.

Ms. Lisa MacLeod: The issues person—can you tell me what that person's name is?

Mr. Philip Donelson: I believe the call was led—this was a while ago when I was doing this—by Bill Killorn.

Ms. Lisa MacLeod: Pardon me?

Mr. Philip Donelson: Bill Killorn.

Ms. Lisa MacLeod: Bill Thorn?

Mr. Philip Donelson: Bill Killorn.

Ms. Lisa MacLeod: How do you spell that?

Mr. Philip Donelson: I'd have to get back to you.

Mr. John Yakabuski: B-I-L-L.

Ms. Lisa MacLeod: B-I-L-L.

Mr. John Yakabuski: I'll help you with the first part.

Ms. Lisa MacLeod: You're not doing these anymore?

Mr. Philip Donelson: No.

Ms. Lisa MacLeod: Who in your office would be taking those calls?

Mr. Philip Donelson: I believe Matthew Whittington.

Ms. Lisa MacLeod: Matthew Woodington?

Mr. Philip Donelson: Whittington.

Ms. Lisa MacLeod: Whittington. When you were taking these calls, at any point in time, did you have to brief your colleagues on the gas plants issue as an issue that would be arising in question period later that day or that came up the day before?

Mr. Philip Donelson: I wouldn't characterize it as a briefing; I would just be sharing some high-level key messages. That would be for any issue that faces the Ministry of Energy.

Ms. Lisa MacLeod: Yes. Would you then send speaking points on the gas plants issue once it was addressed on an issues call by the government?

Mr. Philip Donelson: My role is to develop the key messages that go into the House book for the minister, so I would then take it to him for that day. Depending on what the issue is, I would chat with him about what's going on—

Ms. Lisa MacLeod: But you would definitely have spoken on an issues call with the Premier's office as well as other ministers' offices about the issue of the gas plants.

Mr. Philip Donelson: Yes, that's correct.

Ms. Lisa MacLeod: You would have. At any time, were you asked questions by the Premier's office or by other ministerial staff from a variety of different departments?

Mr. Philip Donelson: No. It's not a question-asking call.

Ms. Lisa MacLeod: Who would have been responsible for the gas plants issues within the Premier's office?

Mr. Philip Donelson: I wouldn't be able to speak to that. I'm not sure. I don't work in that office.

Ms. Lisa MacLeod: So at no time would somebody from the Premier's office contact you directly and say, "You're working on this House note. You talked about it on the issues team. I need a little bit more information to give to the Premier in order for her to respond" either (a) in the gas plant committee, when she has been invited to hearings; (b) in the Legislature, while she's answering questions from the opposition; or (c) responding to media requests or media availabilities? At no time was there any

collaboration between you or your office with the Premier's office?

Mr. Philip Donelson: What do you mean by "collaboration"?

Ms. Lisa MacLeod: Well, you know how these things work. Right? Typically, ministers try to provide policy cover to the Premier or the Prime Minister. They do that working in tandem with one another where the minister or ministry officials would be deemed the political expert within their file, and they would provide that information to the centre—as it's typically called in our lexicon—whether that's the Premier's office or the Prime Minister's office. I just would find it, with all due respect, very difficult to believe that those conversations never would have taken place between the Premier's office and the minister's office.

Mr. Philip Donelson: As I said, my chief of staff handled the gas plants file specifically. I would create the House book for the minister and update the notes as needed and was happy to share those with the Premier's office.

Ms. Lisa MacLeod: So you've shared your issues notes. Just one final question, and I'll give it over to my colleagues here. You would have obviously, as an issues analyst—now you're a senior policy adviser. You're somebody who spent a great deal of time with the minister on this matter: You've drafted House notes; you provided issue notes; and you would have been a liaison in many ways with the Premier's office or the centre, as it were. I'm wondering, when you moved over to the Ministry of Energy from infrastructure, were you ever given a briefing on what these gas plants issues were all about?

Mr. Philip Donelson: When I joined the Ministry of Energy—I believe it was in March 2013—I received a series of foundational briefings, one of which was on this particular issue. It was very sort of high level—just a timeline of the events that had occurred up until that point. So it was a very short briefing.

Ms. Lisa MacLeod: Who provided that briefing?

Mr. Philip Donelson: I don't recall specifically. It would have been ministry staff.

Ms. Lisa MacLeod: It was ministerial staff, not political staff?

Mr. Philip Donelson: No. It would have been Ministry of Energy staff.

Ms. Lisa MacLeod: Okay. So it was a bureaucratic briefing?

Mr. Philip Donelson: Yes.

Ms. Lisa MacLeod: Okay. Mr. Yakabuski?

Mr. John Yakabuski: Thank you, Mr. Donelson, for joining us here.

I'm going to focus on some of the stuff surrounding question period because you provided the minister with his House book. That would be his notes, his speaking notes, his notes for responses. But in the context of question period, many times opposition questions, either from us or the third party, would be directed to the Premier. So would you be involved in the Premier's responses,

briefing the Premier's office with possible responses to those questions in the House as well?

Mr. Philip Donelson: No.

Mr. John Yakabuski: No.

Mr. Philip Donelson: I wasn't involved in the Premier's briefing—

Mr. John Yakabuski: No involvement in that. So where was the coordination between the two offices? Where was the clearinghouse? Who was the central figure who would ensure that the messaging was the same when the Premier was answering the question or when the Minister of Energy was answering the question?

Mr. Philip Donelson: As I said, I had my House book and shared that with the Premier's office. They would have seen the notes I had for the minister and what the minister was—

Mr. John Yakabuski: So you did have communication with the Premier's office on possible responses in question period?

Mr. Philip Donelson: Yes, but I would not be involved in briefing the Premier in any way.

Mr. John Yakabuski: No; I didn't mean it in a direct basis where you'd be sitting down with Kathleen Wynne. I didn't mean that. But there was constant communication as to how we were going to respond to this on a daily basis in the House as issues arose and as new information became available to us, for example, in the work of this committee. We found on this committee that many of the answers that were given in the House on one day were shown to be—and I'll say this charitably—inaccurate. The answers were wrong—factually wrong—from the point of view particularly of the cost issues. I specifically look, for example, at when the auditor's reports were coming out or when the speculation as to what the auditor was finding was coming out.

Where would this information have been gotten from? When you're giving the minister—were they just making it up? Were you making it up for them? Was this kind of a collaboration thing? When they were clinging to figures like \$40 million and stuff like that, where was that coming from?

Mr. Philip Donelson: Well, the ministry—the bureaucratic side of it, the public servants—create House book notes as well. They provide those to us, and we make changes as we see—or use that as background, I guess—

Mr. John Yakabuski: You make changes?

Mr. Philip Donelson: No. Actually, that's not the right way of saying it.

Mr. John Yakabuski: But you did say it. So you make changes. They could give you something that was factual, and you might change it to something that suited the message of the day. Is that what you're saying?

Mr. Philip Donelson: No, that's not what I'm saying.

Mr. John Yakabuski: What are you saying?

Mr. Philip Donelson: I meant formatting changes, larger font and that sort of thing.

Mr. John Yakabuski: Formatting changes?

Mr. Philip Donelson: Yes.

Mr. John Yakabuski: Okay.

Mr. Philip Donelson: As I said, I would have worked with the minister to—

Mr. John Yakabuski: Right. Okay. Well, that's interesting.

So when these questions would be presented to the Premier or the minister, and it was clear that the pressure was building—and we're going back a year that this committee's been going on, and the questions went on before that. I understand that you only came on board—when was it that you came on board, Mr. Donelson, the date? I've got years here, but I don't have a date.

Mr. Philip Donelson: To which office?

Mr. John Yakabuski: To the Minister of Energy.

Mr. Philip Donelson: That was March 2013.

Mr. John Yakabuski: So as soon as Mr. Chiarelli was appointed minister?

Mr. Philip Donelson: About a month later.

Mr. John Yakabuski: Right. Okay. Some of this stuff had taken place beforehand, but of course Minister Chiarelli was in the cabinet as well, so you would have been part of those conversations that staff from different ministers' offices have on a regular basis, as you said. I'm curious as to when the tenor changed within your offices as to how we were going to respond to this in the House. Was it after the auditor's report was tabled, or was there a meeting—because we know that the auditor's report had to be given to the minister or the Premier's office, most likely the minister as well, prior to it being tabled, so that they had a chance to review it. So you knew before the report was published that the numbers that you had been talking about all along, or your minister or the Premier had been talking about all along, were in fact not correct. When did the conversation take place that, "We have to start to formulate a new response, knowing that the auditor's report is going to throw cold water on what our story was all along"?

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Mr. Philip Donelson: I'm not really sure what you mean. I don't know that the tenor changed, as you said. If you could be more specific.

Mr. John Yakabuski: When the auditor was completing the report, the Premier's office and the minister would have received the report before we saw it, because they had the opportunity to respond to it. It's standard procedure for the auditor to let the government know what they're going to be producing. Many times there are actual ministerial responses, not so much in this one, but the facts were clear sometime at that point that there were going to be changes in what was going to be presented to the public. In your meetings with your different ministry staff, the minister himself, the people in the Premier's office that were also directing this, when did they say, "We're going to have to start to prepare new responses, because we know that the auditor's report is debunking what we have been saying all along"?

Mr. Philip Donelson: I wasn't involved in such a conversation.

Mr. John Yakabuski: Never involved in such a conversation?

Mr. Philip Donelson: I don't recall any, no.

Mr. John Yakabuski: So who would be involved in that conversation?

Mr. Philip Donelson: I wouldn't be able to speculate. I'm sorry.

Mr. John Yakabuski: But you provide the issue notes for the minister. Was the auditor's report or the content of it, prior to its public release, ever mentioned to you? Were you aware of the contents before its public release?

Mr. Philip Donelson: My chief of staff, as I said, had carriage of this whole file. I was made aware of—I saw a copy of the auditor's report after it was final—

Mr. John Yakabuski: But not published?

Mr. Philip Donelson: —shortly before its release, to read through.

Mr. John Yakabuski: What do you consider "shortly," Mr. Donelson? A month?

Mr. Philip Donelson: No, no. I believe it was within a day.

Mr. John Yakabuski: Within a day of it being publicly released is when you saw it?

Mr. Philip Donelson: Yes.

Mr. John Yakabuski: And when would your minister have seen it?

Mr. Philip Donelson: I don't know that he would have seen a copy of the report specifically. I believe he testified that he received a high-level briefing.

Mr. John Yakabuski: Interesting.

Did you have any questions, Lisa? I'm going to turn this over.

The Chair (Mr. Shafiq Qaadri): Ms. Thompson.

Ms. Lisa M. Thompson: Well, I find it very intriguing, Mr. Donelson, that we're going in circles here today, because as I heard you describe the situation, you're responsible for preparing the House notes and briefing notes for the minister.

Mr. Philip Donelson: That's correct.

Ms. Lisa M. Thompson: All the while, it sounds like it's very fluid. You're getting last-minute information from your chief of staff in order to brief the minister, and it's concerning that your minister hadn't even reviewed the Auditor General's report, because they were sharing numbers that—they were in a position of trust. I guess my question for you to kick off is, how do you feel the Ontario taxpayer should feel when they hear that there's very little preparation, that the minister doesn't even read the Auditor General's report? How do you think Ontario taxpayers should feel when this type of information is being disclosed?

Mr. Bob Delaney: Chair, on a point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, on a point of order.

Mr. Bob Delaney: That one has in fact crossed the line, making an assertion of something that likely never took place and asking the witness to speculate on something that he had no way of knowing about.

Ms. Lisa MacLeod: Same point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. MacLeod.

Ms. Lisa MacLeod: While I do appreciate that he allowed me to go through my questioning, I think the questioning by my colleague is fair, given that it was indicated by the witness that he did not provide that material; the minister did not read the report.

The reality is, Chair, you cannot have it both ways, so a direct answer to a direct question would be most preferable, and if he's not prepared to provide that, then I think that the question my colleague is asking is fair.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We're still debating the issue. We're coming down really on the side that the question is crossing the line, probably not really material. The witness is free to answer as he sees fit. It does seem to be a little bit on the speculative side. Please continue; a minute and a half left.

Ms. Lisa M. Thompson: You're allowed to answer.

Mr. Philip Donelson: That's all right.

Ms. Lisa M. Thompson: Interesting. No answer is an answer. I just need to put that on the record.

Ms. Lisa MacLeod: May I also put it on the record that our witness is here under oath. Could you reconfirm that, yes or no, Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Donelson?

Ms. Lisa MacLeod: Our witness is under oath?

The Chair (Mr. Shafiq Qaadri): Yes, yes. He has affirmed.

Ms. Lisa MacLeod: Thank you.

You may want to proceed again.

Ms. Lisa M. Thompson: Okay. So again, your role is to prepare the House book—

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Lisa M. Thompson: —to brief the minister. Who do you get your briefing from in order to brief the minister?

Mr. Philip Donelson: In that role, I would review the news clippings of the day, whatever was in the news, and share that with him, and perhaps make changes to—

Ms. Lisa M. Thompson: So ultimately, you've been responsible for some of the things that we've heard the minister share within the House, be it correct or not?

Mr. Philip Donelson: I simply prepare the House book notes, in that role, and update it based on news clippings of the day.

Ms. Lisa M. Thompson: Do you enjoy your position?

Mr. Philip Donelson: I'm not currently in that position anymore. I do very much—

Ms. Lisa M. Thompson: Did you enjoy that position?

Mr. Philip Donelson: —enjoy my position.

Ms. Lisa M. Thompson: Interesting. Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you to the PC side. Mr. Tabuns, your turn.

Mr. Peter Tabuns: Mr. Donelson, thank you for being here today. I assume you're familiar with the Archives and Recordkeeping Act?

Mr. Philip Donelson: I am indeed.

Mr. Peter Tabuns: And you maintain your records in your current position in accord with the act?

Mr. Philip Donelson: I do.

Mr. Peter Tabuns: When you worked for the government prior to February 2013, did you keep your records in accord with the Archives and Recordkeeping Act?

Mr. Philip Donelson: I believe so, yes.

Mr. Peter Tabuns: I'm sorry?

Mr. Philip Donelson: Yes.

Mr. Peter Tabuns: You did. So when you left your previous positions with infrastructure and transportation, you turned over your records to the archivist?

Mr. Philip Donelson: When I left, I transitioned, in the sense that I left all relevant documents with the person who was taking my job. I sat down with them and discussed what the job was, what the issues facing the ministry were. I shared my House book and relevant documents.

Mr. Peter Tabuns: You were aware at that time of the existence of the ARA, the Archives and Recordkeeping Act?

Mr. Philip Donelson: I'm not sure that I was. We received training on that act, I believe it was in the spring of this year, and so I was made fully aware at that point.

Mr. Peter Tabuns: Before you were made fully aware of the act, though, in your common practice as a political staffer, you preserved your emails, you preserved relevant records?

Mr. Philip Donelson: Yes. I never made a habit of deleting emails or that sort of thing.

Mr. Peter Tabuns: And was that the practice of the people who you worked with?

Mr. Philip Donelson: I wouldn't be able to comment on their practices. I'm not sure.

Mr. Peter Tabuns: Okay. I have no further questions. I appreciate your being forthcoming.

Mr. Philip Donelson: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. To the government side. Mr. Delaney.

Mr. Bob Delaney: Mr. Donelson, welcome. You're witness number 81 on our one-year anniversary.

Just a quick recap: I think this is a question you already answered from one of my colleagues. You began working at the minister's office, at energy, in March 2013. Correct?

Mr. Philip Donelson: That's correct.

Mr. Bob Delaney: The estimates motion that requests correspondence related to the gas plants captured documents up to December 2011. Based on when you began working at the Ministry of Energy, it would also be correct that that first estimates motion would not have captured any of your documents.

Mr. Philip Donelson: That's correct.

Mr. Bob Delaney: You might remember that on March 5, 2013, the government members of the committee moved a motion directing a government-wide search of all documents relating to the relocations of both gas plants. That motion would have required all government ministries, ministers' offices, Cabinet Office, Premier's

office and the OPA to conduct a search of their records. You would recall that, I think.

You didn't work at all with the Ministry of Energy prior to the leadership race in 2012-13?

Mr. Philip Donelson: That's correct.

Mr. Bob Delaney: So relevant correspondence with your name on it would have been captured within that March 5 document request motion and turned over to this committee. Right?

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Mr. Philip Donelson: I believe so.

Mr. Bob Delaney: A couple of questions—I'm going to follow my colleague Mr. Tabuns. Were you ever directed by any of your chiefs of staff or other colleagues to delete things?

Mr. Philip Donelson: No.

Mr. Bob Delaney: When former Premier McGuinty testified at committee, he agreed that there had been a lack of adequate training for staff in this area of records management, which stands to reason: The technology in between the time the government was elected and the present has progressed in leaps and bounds in ways not even imaginable at the time the government was formed in the fall of 2003.

In former Premier McGuinty's response to the Information and Privacy Commissioner's report, he stated, "I agree with the commissioner that despite some efforts, we did not devote adequate resources and attention to ensuring all government staff in all ministries and in the Premier's office were fully informed of their responsibilities. This inadequate training made it difficult for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated." Would you agree with the former Premier that there was, at that time, a lack of formal training in how to properly manage records?

Mr. Philip Donelson: Yes, I would agree with that.

Mr. Bob Delaney: Okay. So I'm sure, then, that being said, that it was apparent to staff that they were not required to keep every single record. Right? Okay.

As you're aware, the government has taken a number of initiatives to improve the system and to ensure that staff are better trained in record-keeping and in document retention practices. I'm just going to review a couple of things here. The Archives and Recordkeeping Act explains that transitory records are not required to be kept, and the Common Records Series defines those transitory records as "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record." According to the act, there are many types of records that would fall into this transitory category; for example, duplicates, records of short-term value, intermediate records and draft documents. In fact, Archives Ontario even has a fact sheet which now forms a part of this committee's permanent

record, and it's entitled *The Fine Art of Destruction: Weeding Out Transitory Records*.

First of all, did you participate in the mandatory staff training?

Mr. Philip Donelson: Yes, I did.

Mr. Bob Delaney: Do you have a better understanding of your requirements on what to keep and what to toss?

Mr. Philip Donelson: Yes. The training was robust. I found it very useful.

Mr. Bob Delaney: Okay. A little bit, then, about your experience with the Minister of Energy and the series of initiatives that the ministry has rolled out since you started to work there—

Ms. Lisa MacLeod: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Point of order, Ms. MacLeod.

Ms. Lisa MacLeod: I'm not sure how this is relevant. If the member opposite won't allow us to question on the long-term energy act, I hardly see how it is relevant for the witness's position, observations or opinions on any of the other initiatives that have been rolled out by the Liberals in the Ministry of Energy.

Mr. Bob Delaney: I don't mind my colleague questioning the relevance of a question—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. I appreciate your—

Mr. Bob Delaney: —but I haven't asked one yet.

The Chair (Mr. Shafiq Qaadri): Just a moment, Mr. Delaney.

We appreciate your concerns. It seems to escape the notice of all members of the staff and the Chair—

Ms. Lisa MacLeod: I know, because it was so riveting; that's why.

The Chair (Mr. Shafiq Qaadri): I'd invite you to just continue and please confine your remarks to the mandate. Thank you.

Mr. Bob Delaney: Well, thank you, Chair, but as I just said, I have not asked a question off track yet.

The figures that the minister would refer to were supplied to the ministry by the Ontario Power Authority. Correct?

Mr. Philip Donelson: That's correct; yes.

Mr. Bob Delaney: So it would then be inaccurate to say that the figures that you would have put into any of your briefing notes originated in the Ministry of Energy. In fact, in every case, the ministry was relying upon information supplied to it and verified by the Ontario Power Authority. Correct?

Mr. Philip Donelson: Yes, that's correct.

Mr. Bob Delaney: Okay. Chair, I think I'm going to stop there on this round.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Ms. MacLeod—to the PC side.

Ms. Lisa MacLeod: Did you know that it was illegal to delete emails in an attempt to cover up the truth?

Mr. Philip Donelson: I don't know what you mean.

Ms. Lisa MacLeod: It's fairly clear. It's illegal to delete emails to cover up the truth. Did you know that?

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, the language is a little bit excessive, but go ahead.

Ms. Lisa MacLeod: Okay. Our legal adviser had said it was fine.

The Chair (Mr. Shafiq Qaadri): Well, I can get my legal adviser to talk to your legal adviser—

Ms. Lisa MacLeod: Okay. That's fine, but I just put it forward.

The Chair (Mr. Shafiq Qaadri): Fair enough.

Ms. Lisa MacLeod: Did you know that?

Mr. Philip Donelson: I don't really know what you're referring to. I'm sorry.

Ms. Lisa MacLeod: This whole committee is about it. The whole committee is about deleted emails and gas plants, cancellations and cover-ups and billion-dollar fees, all that sort of thing. Did you ever know that it was illegal to delete emails in government to cover up a scandal? Did you know that? There's an OPP—

The Chair (Mr. Shafiq Qaadri): I appreciate you're just expanding the question, essentially with the same nuggets, but go ahead.

Mr. Philip Donelson: I'm not sure what you're referring to specifically. Do you have an example? I don't know what you mean.

Ms. Lisa MacLeod: Well, we have an OPP investigation right now on this issue. You didn't know that?

Mr. Philip Donelson: I'm aware of that investigation through media reports, but I have had no—

Ms. Lisa MacLeod: So did you know that it was illegal to delete emails?

Mr. Bob Delaney: Chair, on this one, I do have to interrupt on a point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order. Time is stopped, by the way.

Mr. Bob Delaney: When we had Chris Morley in here testifying, Mr. Morley testified pursuant to the Common Records Series and described in detail what types of emails must in fact be deleted and what types of documents that are transitory in nature must in fact be deleted, and as such, to ask a question that suggests that it is illegal to delete emails ignores the fact that there are certain types of correspondence and documents that must be deleted.

As such, the witness's reluctance to answer a question that can be interpreted any number of ways is quite understandable. I think the question has to be restated such that it is within the bounds of the committee's mandate.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. I will allow the question to stand. However, I guess in view of attempting to get an appropriate answer, Ms. MacLeod, perhaps you might just focus your question; for example, if you're attempting to extract from the witness his knowledge of the record archive act, please just be a little bit more specific as opposed to a general comment. Please proceed.

Ms. Lisa MacLeod: Okay. The question stands. Can you answer that?

Mr. Philip Donelson: As I was stating before, I think all staff received significant training on the Archives and Recordkeeping Act, and that was in the spring of this year, I believe. So I'm aware of the act.

Ms. Lisa MacLeod: So before that, did you ever delete any emails with respect to the cancelled gas plants?

Mr. Philip Donelson: No. I wouldn't have had any emails—

Ms. Lisa MacLeod: Could you provide this committee with all of your emails dating as far back as your entering into the minister's office in 2013?

Mr. Philip Donelson: I wouldn't have had any—sorry. Can you repeat the question?

Ms. Lisa MacLeod: Can you provide us with any of your emails with respect to the gas plants and the cancellation of gas plants dating back as far as 2013 when you arrived in the minister's office?

Mr. Philip Donelson: I believe there have been motions and I in fact have already.

Ms. Lisa MacLeod: Have you provided those to the committee?

Mr. Philip Donelson: I believe so, yes.

Ms. Lisa MacLeod: You have provided these to the committee?

Mr. Bob Delaney: Chair, again, the many motions—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order.

Mr. Bob Delaney: —for document production made by both the PC and the NDP sides have in fact been fully complied with. If this staff member or any other had responsive documents, they too would have been captured in all of that information. It is in fact, and has been for some time, in the members' possession, and if they wish to search for any or all of Mr. Donelson's documents and correspondence, all they've got to do, as it's electronically searchable, is simply run a query.

The Chair (Mr. Shafiq Qaadri): Thank you. Presumably, Ms. MacLeod, those emails have been captured with the various document dumps that are coming our way. If you're asking if there were—

Ms. Lisa MacLeod: That are coming our way?

The Chair (Mr. Shafiq Qaadri): All right. I appreciate your nailing me on the present tense there, but in any case, the point being simply that documents have been provided and presumably those have—

Ms. Lisa MacLeod: And they're coming to us. Okay. My colleague has some further questions.

Mr. John Yakabuski: I just actually have one more question. So you've confirmed that you never deleted any

emails with respect to the gas plant cancellation or relocation? You personally have not deleted any emails or records with respect to that issue?

Mr. Philip Donelson: Yes. I don't believe I have, yes.

Mr. John Yakabuski: You don't believe you have or you haven't?

Mr. Philip Donelson: I don't believe I have.

Mr. John Yakabuski: Can you speak up?

Mr. Philip Donelson: I don't believe I have. I don't make a habit of deleting emails.

Mr. John Yakabuski: Okay. Thank you. Were you at any time or are you now involved in the ongoing OPP investigation into the scandal?

Mr. Philip Donelson: I have no knowledge of that investigation.

Mr. John Yakabuski: You have no knowledge of the investigation whatsoever. You have not been questioned or—

Mr. Philip Donelson: No. The only knowledge I have is through media reports.

Mr. John Yakabuski: Right. What about any of your colleagues in your office? Are you aware of any of them being questioned by the OPP?

Mr. Philip Donelson: I have no knowledge of that.

Mr. John Yakabuski: No knowledge of that. Okay. Thank you very much.

The Chair (Mr. Shafiq Qaadri): The PC side cedes it's time?

Interjection.

The Chair (Mr. Shafiq Qaadri): Thank you. To the NDP: Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Chair, but I have no further questions. My thanks to the witness.

Mr. Philip Donelson: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. To Mr. Delaney.

Mr. Bob Delaney: Mr. Donelson, is there anything else that you either want to clarify, state or amend the record on?

Mr. Philip Donelson: No. I just thank the committee for its work on siting, and hope it continues.

Mr. Bob Delaney: We thank you very much for your time to come and see us today. Chair, that's all we have.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Thank you, Mr. Donelson.

Committee is now adjourned.

The committee adjourned at 1541.

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of Ontario**

Second Session, 40th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 40^e législature

**Official Report
of Debates
(Hansard)**

Tuesday 18 March 2014

**Journal
des débats
(Hansard)**

Mardi 18 mars 2014

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

Privilèges des députés



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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 18 March 2014

Mardi 18 mars 2014

The committee met at 1500 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I call the meeting of the Standing Committee on Justice Policy officially to order.

MR. KEVIN COSTANTE

MR. DAVID NICHOLL

The Chair (Mr. Shafiq Qaadri): We have our first witness of the day, Mr. Kevin Costante, who will be affirmed, also accompanied by David Nicholl, who will be sworn in. Mr. Costante.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Kevin Costante: I affirm.

The Chair (Mr. Shafiq Qaadri): And Mr. Nicholl.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. David Nicholl: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen. You know the drill: a five-minute opening address, followed by questions in rotation. Commencez, s'il vous plaît.

Mr. Kevin Costante: Thank you, Mr. Chair. My name is Kevin Costante and it's a pleasure to be here today. As this is my second appearance before the committee, I don't have long opening remarks. The committee may or may not be aware that I did retire from the OPS at the end of February and I am no longer the Deputy Minister of Government Services, although I was happy to don a suit again today to be here with you.

As with my previous appearance before the committee, I am joined by David Nicholl, who is the corporate chief information officer for MGS and the interim deputy minister of the Ministry of Government Services. With that, David and I are happy to take questions and help you however we can.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Costante. To the PC side: Ms. MacLeod.

Ms. Lisa MacLeod: Thank you very much, Chair. And thank you, Mr. Costante and Mr. Nicholl. I appreciate you coming in today.

As you probably can appreciate, there are many of us in the opposition who are trying to really piece this together and assess what really happened, why it really happened and who directed what happened. I know that particularly you, Mr. Costante, had a number of interactions, not only with this committee but in particular with the Information and Privacy Commissioner of Ontario.

Over the summer break, when MPPs were in their constituency offices, we were confronted with a letter and, I guess, a report, more than anything, from Ann Cavoukian. I'm going to read into the record—I think this is the first opportunity to be able to do that—what was in the Toronto Star on August 21, 2013, and just have your response on this. I know you apologized at the time, but I'd like a greater explanation from you.

Ms. Cavoukian wrote:

"In light of the information I now have, I would have arrived at a different conclusion regarding the ability of MGS (Ministry of Government Services) staff to retrieve the relevant emails from Mr. MacLennan's email account.

"However, the other findings in my report were not affected and remain accurate."

She further says, in her appendix—and this is a loose translation of her quote; it's not a direct quote—that MGS had claimed that you could not find anything from Mr. MacLennan's account—and this would be Craig MacLennan, who worked for both Brad Duguid and Chris Bentley, former energy ministers who would have been responsible for the gas plant cancellations. You could not retrieve them, but you later found 39,000 emails either sent or received by him on a backup computer drive.

She says: "I was baffled as to how MGS staff could have failed to provide relevant, accurate information about the IT systems under its control."

She further says: "I remain saddened at the failure of MGS staff to dedicate adequate resources to provide accurate and complete information to my office during the course of my initial investigation...."

"The provision of inaccurate and incomplete information in my initial investigation is unprecedented during my tenure as commissioner."

Then you, valiantly—on behalf of a government that was covering up this massive \$1.1-billion gas plant scandal, which we would later find out from the Auditor General just a few short months later—took responsibility for it and you apologized profusely and you acknowledged to her office that you provided her with inaccurate and incomplete information regarding the OPS enterprise email system and the existence of possible backup tapes from the relevant period.

I want your opinion on this, on what she has said, and then I want to ask you a few other follow-up questions.

Mr. Kevin Costante: Thank you for the question. I answered this in my first appearance here, and I'll go through the course of events again.

When the privacy commissioner was doing her report—I think it was in April and May of last year—she did ask to meet, and met with, ministry staff on two occasions. I believe they were about an hour each. These were staff both from our IT area and our archives and information area, as well as legal counsel. After those meetings, there was a series of questions that came to the ministry, very specific questions, which we answered.

I think in the course of those meetings, she was asking very specifically about the particular email account for Mr. MacLennan that you mentioned. I think our staff—again, as I previously testified—answered on the basis of policy. When she asked whether the email account still existed—normally when somebody leaves the OPS or the government, at the end of that, they're supposed to retain the documents that are necessary, and then the account is deleted. There was a record that his account was deleted.

The OPS email system has two components: a primary component, and then it has what's called the Enterprise Vault, which stores emails that are older than 30 days. Staff responded that the email was deleted. They did not go in and check, and it turns out that the primary account was deleted, and the secondary account had not been deleted.

Ms. Lisa MacLeod: Why wouldn't staff have checked? This is a pretty big issue. There are allegations that this has bought at least five seats in the middle of a general election in a province. I mean, that's serious. There was a motion of contempt for the former energy minister previous to that, or at least during that same time. This Legislature has been rocked by a series of allegations, not the least of which has been the auditor doing not only one but two investigations into these cancelled gas plants and the costs.

I'm just trying to understand why, then, a bureaucrat in your office would answer only by the policy and not do the verification.

Mr. Kevin Costante: I think that in fairness—

Ms. Lisa MacLeod: And that leads me to think that somebody had to have politically interfered here. I'm not convinced otherwise, by that response.

Mr. Kevin Costante: Okay. I think they did go back and check. They checked the log, and they found that there was a log there that said the email account had been deleted.

You're right, and that's why we've apologized to the privacy commissioner. They did not actually go into the system itself and look and see whether both parts of the account had been deleted. A mistake was made; an error was made. I talked to the staff who were involved in this afterwards. With neither I nor they was there any political interference in that transaction whatsoever.

Ms. Lisa MacLeod: But we're looking at what I think appears to be a cover-up. When you see—from our perspective, anyway—an OPP investigation ongoing, and the fact that the Auditor General has confirmed that the two gas plant cancellations are \$1.1 billion; when the Information and Privacy Commissioner, an officer of the Legislature, comes out and says that she has been obstructed in her work, and it was only because of this committee that she ended up retaining information; and then fast-forward to today, when we now have the OPP seizing hard drives from this government at a storage facility in Mississauga—I'm sorry, and I'm just going to put this out there, and then we can move on, but suggesting that there wasn't any political interference really doesn't hold a lot of water for us.

I'm going to have to ask you a couple more process-related questions, and then maybe my colleagues have a few; I'm not sure.

1510

Mr. Kevin Costante: Can I respond? I can only tell you what I know. I know there was no political interference. No one told us to not co-operate with the privacy commissioner. When we did find the emails at the end of June, I guess—immediately after we discovered there were responsive emails in the account, we notified the minister, the privacy commissioner and the OPP, so it's not as if we were trying to cover it up. As soon as we found it, we made people know.

Ms. Lisa MacLeod: Okay, but to her point, and I don't want to speak for Ms. Cavoukian, so I'll actually use some words that she provided to the Globe and Mail around that period of time last summer, she points out, "There are no less than five different places—including shared drives, backup tapes and the folders of some email accounts—where gas plant-related emails" were then discovered. It's not like it was just one email log; it was actually in several locations where there seemed to be a great deal of either incompetence or cover-up as a motive.

I'm just trying to bring this in for you to appreciate where we're coming from as legislators in an assembly that should be independent and as a legislative officer who should be independent and should have access to the information.

Perhaps at this time you could describe the process by which the data from the backup tapes at the government's facility are converted to searchable files which can be viewed in electronic or hard copy. Would you be able to provide us with that process?

Mr. Kevin Costante: Can you?

Mr. David Nicholl: Sure. So you're looking for the process of how you go from a backup tape to do a search?

Ms. Lisa MacLeod: Yes.

Mr. David Nicholl: Technically you'll grab the backup tape, you'll bring it in, you'll load it onto the tape drive, and you'll dump the data from that tape drive onto a disk drive in our data centre. You'll then put it into a certain format so that our tools can then search it based on the criteria that we used all through the summer; for instance, names, keywords, dates and that kind of stuff. That's the process that you go through, technically, and then it goes into a normal search.

Ms. Lisa MacLeod: Can I just ask you a quick question? Excuse my ignorance on this in terms of what the process is, Mr. Nicholl. Do you have access, or did you have access, to the drives that were recently seized by the OPP?

Mr. David Nicholl: No. They were—there's a word that the OPP used—under the interest of the OPP at that point, so we didn't touch those at all, no.

Ms. Lisa MacLeod: How long have they been under the interest of the OPP? Since the seizure, since the search warrant or previous to that?

Mr. David Nicholl: I think from the minute they came in on the investigation, which was June 5 or 6—somewhere in there—the 7th maybe, whenever the OPP were called. That's when they became under the interest of the OPP. Prior to that, they had been under the control of the Cabinet Office, which has been talked—

Ms. Lisa MacLeod: Who in the Cabinet Office would have been responsible for those hard drives?

Mr. David Nicholl: I don't know personally, but in previous testimony, I think it has been talked about exhaustively, the process during transition, that Cabinet Office took possession of hard drives and BlackBerrys, I think. Those were—

Ms. Lisa MacLeod: Okay, so Mr. Costante, can I ask you this question? You're taking grave responsibility for this; you're showing up at this committee under this oath, saying that there was no political interference. Yet the Cabinet Office had these documents. Who in the Cabinet Office would you have worked with when you were first indicating to the Information and Privacy Commissioner that no such documents existed? Who would you have worked with? In the Cabinet Office, presumably you're working with other bureaucrats, the cabinet secretary. Is there anybody else?

Mr. Kevin Costante: I think with most motions—sorry; I'm going to have to get you to repeat the question. I'm not sure I understand.

Ms. Lisa MacLeod: Okay. We have a number of hard drives that have recently been seized, so let's work backwards. We have a number of documents and hard drives recently seized by the OPP. I asked if you had access to those. Mr. Nicholl told me you did, but only up until the OPP viewed them as an interest. So I had asked, who had control of those before the OPP had interest in them, which would have been back, in your time frame, June? Mr. Nicholl replied that, well, the Cabinet Office did.

I'm just suggesting that you at that point in time would have been requested for these documents by the Informa-

tion and Privacy Commissioner. If you didn't have them, and they were actually accessible only to the Cabinet Office, who in the Cabinet Office would you have spoken with? The cabinet secretary?

Mr. Kevin Costante: Sorry. She requested whether his account still existed. I'm not aware that she asked us about hard drives and physical equipment.

Ms. Lisa MacLeod: She said, "There are no less than five different places—including shared drives, backup tapes and the folders of some email accounts—where gas plant-related emails have now been discovered."

"In two letters to Ms. Cavoukian, the top civil servant at the ministry took the blame for the problems" and apologized. He conceded that his staff had done more to find emails for the committee than it had for the commissioner.

Mr. Kevin Costante: But I think that's different than the hard drives and the physical equipment that the OPP and Cabinet Office had under their—that's not what we were searching.

Ms. Lisa MacLeod: That might be physical equipment, but it does have data on it.

Mr. David Nicholl: Yes, and so we had discussions with the IPC around things like backup tapes. We talked about the desktop that's got a hard drive in it. We talked specifically with the IPC around Mr. MacLennan's PC; I think it's in her report. There's no connection between the hard drives that were taken offline during transition and the discussions we had with the privacy commissioner around things like—

Ms. Lisa MacLeod: So what interest, then, would the OPP have, if there's no connection? Clearly, they think there's a link.

Mr. David Nicholl: Honestly, I don't want to comment at all on what the OPP may or may not be doing.

Ms. Lisa MacLeod: But you just did. Right? You're trying to deny it, but there's clearly an interest by the OPP commissioner.

Let's just move on, because I don't think I'm going to get the answer to my question. On July 9, this committee requested all documents and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga power plants from a number of senior government officials. On the 22nd of July, the Ministry of Government Services produced a memorandum to the Chair of the Standing Committee on Justice Policy, right here, outlining the number of backup tapes related to its investigation. At the time, the total number of backup tapes identified was 3,226, yet some searches were still ongoing. Can you tell me if that number has changed since the memorandum was first produced? If you can, would you provide us with a new, updated number?

Mr. Kevin Costante: I'm not aware that it changed. I was not informed of any change.

Ms. Lisa MacLeod: Are you still looking and searching?

Mr. Kevin Costante: Sorry. I ceased being deputy on the 28th of February, so I'll have to ask—

Mr. David Nicholl: So no, we're not searching anymore. I think 3,226 is probably still the right number.

Ms. Lisa MacLeod: So 3,226? Okay. That same July, in that same document from MGS, you stated that it would take between two and four hours to restore each backup tape. Given the number of backup tapes surrounding the Oakville and Mississauga gas plant cancellation, we may have to wait for quite a bit of time, obviously. How long do you think it will take to get that information, and how long to get the documents that are connected to the current Premier?

Mr. Kevin Costante: You want to know the time frame?

Ms. Lisa MacLeod: Yes. You had indicated that it takes two to four hours to restore each backup tape. You're telling me there are 3,226 backup tapes, so I'm wondering how long it's going to take to get the information and how long, precisely, before you expect to get those documents that are connected to the current Premier, Kathleen Wynne.

Mr. David Nicholl: We did not do an elapsed-time calculation on it. From a costing perspective, honestly, we just did it on an hourly basis. We never got requested to get the 3,226, so we left it to the discretion of the committee. I think in one of Kevin's letters back to you, he actually said that if you want to select some or a number, then we could come back with a better time as far as an elapsed time is concerned—because it's just straight-line math; it really is. It's a processing time. The piece to add on to it, then, of course, is just the search itself.

Ms. Lisa MacLeod: Would the OPP, with their resources, be able to process those backup tapes quicker than you?

Mr. David Nicholl: I wouldn't say they could, but maybe they've got the ability to go outside and get things done better than we can. I couldn't comment on whether they could do it quicker.

Ms. Lisa MacLeod: Okay. Let's say that they are the same amount of time. Could you prioritize getting the emails related to the Premier? Could you do that?

Mr. David Nicholl: If the committee comes back and asks us to do a certain person's tapes, yes.

1520

Ms. Lisa MacLeod: Okay. And what time frame do you think that would be for the Premier, given the amount of tapes she has been mentioned in?

Mr. David Nicholl: From an elapsed time, I honestly would not want to give an estimate. We've got a number of tapes with her name on it, some when she wasn't Premier, some when she was a minister in other ministries. That's why there are a number of tapes there. But we can certainly come back. If you ask us, we'll come back and put together as best an estimate as we possibly can for it, absolutely.

Ms. Lisa MacLeod: Okay. Well, then, I guess we'll have to put forward a motion with respect to that.

Let's go back to the OPP for a second. What, if any, contact have you had with the OPP since they began investigating?

Mr. Kevin Costante: I'll answer first. I have had no contact.

Mr. Bob Delaney: Chair, just on a point of order.

The Chair (Mr. Shafiq Qaadri): Point of order, Mr. Delaney.

Mr. Bob Delaney: I don't think it's proper to ask current and retired members of the civil service about an ongoing police investigation. I don't think this is in order at all.

The Chair (Mr. Shafiq Qaadri): Your point is well taken, Mr. Delaney, but I think the witnesses are well aware of the protocol and rules. I'll allow them to govern their answers.

Go ahead.

Mr. Kevin Costante: I'll answer first and turn it over to Mr. Nicholl. I've had no contact with the OPP on this subject.

Ms. Lisa MacLeod: But you've had it with other subjects.

Mr. Kevin Costante: MGS is also responsible for bargaining, so I deal with the OPP in terms of bargaining with the Ontario Provincial Police Association.

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Lisa MacLeod: Okay.

Mr. David Nicholl: I have ongoing discussions with the OPP. I've had discussions on this topic. They're one of my clients, and therefore I do a lot of work with the OPP on an ongoing basis.

Ms. Lisa MacLeod: Okay, thanks. So they're not casual conversations; they are actually more formal conversations with the OPP—

Mr. David Nicholl: They're clients of mine, yes, absolutely.

Ms. Lisa MacLeod: They're clients. Okay. I guess I don't really have much more time. Just quickly: Have you been present for any conversations with senior officials when you discussed the government's response to the OPP investigation and the deleted hard drives? Either of you.

Mr. David Nicholl: Governing political? No, absolutely not.

Ms. Lisa MacLeod: Okay. What about anyone in the cabinet secretary's office?

Mr. David Nicholl: I have not.

Mr. Kevin Costante: No.

Ms. Lisa MacLeod: I don't have much more time. How much more time do I have?

The Chair (Mr. Shafiq Qaadri): Nine seconds.

Ms. Lisa MacLeod: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. To Mr. Tabuns and the NDP.

Mr. Peter Tabuns: Mr. Costante, Mr. Nicholl, thank you very much for being here today. I have a few questions, but I just want to follow up on something that you had just said. The tapes, the backup tapes for emergency restoration of records: They are organized by computer, so you have a tape for the minister or Premier; you have a tape for different individuals. How do you structure that backup?

Mr. David Nicholl: They're not really structured at all. In fact, it's basically a dump from disk onto tape. That's why we have to run through tape and we have to pull from tape. It's not terribly intelligent. It's simply a dump of data from disk to tape drive and then back.

Mr. Jagmeet Singh: How often is it done? Is it done on a regular basis, this dumping, or is it done periodically, every month, week, year?

Mr. David Nicholl: The dumping to tape is very regular. We tape backups every day, for instance. The retrieval from tape is very, very infrequent. In fact, last year I think we retrieved probably 12 tapes.

It's for emergency purposes, basically. We just don't do it very often.

Mr. Peter Tabuns: Just so that I'm clear, when you're talking about a dump onto the tape, all that's being held on one disk at one time, with a variety of individuals who have generated email—they're just agglomerated together? Is that correct?

Mr. David Nicholl: Just dumped onto a tape.

Mr. Peter Tabuns: So the only thing that distinguishes one tape from another is the date upon which the dump took place? Is that correct?

Mr. David Nicholl: And we keep indexes, so it's like a card system in the library. I remember the last time we talked about that. There are indexes into it, so that's why we know what's there and how many there might be. That's about the extent of the intelligence around it.

Mr. Jagmeet Singh: Is there a database of the tapes, something that keeps track instead—

Mr. David Nicholl: Yes.

Mr. Jagmeet Singh: There is a database of the tapes.

Mr. David Nicholl: Yes.

Mr. Jagmeet Singh: And what does that database of the tapes contain and how is that organized?

Mr. David Nicholl: I actually can't answer it really, really accurately, but my assumption would be that there would be a thing like the volume number of the tape, probably where the tape would be and probably some dates attached to it. That would be my guess.

Mr. Peter Tabuns: Going on to the questions I had before, then, do you know what information or materials would have been stored at the Mississauga facility where the OPP executed their search warrant?

Mr. David Nicholl: The facility that the OPP visited is simply a secure storage site for us. There is no processing going on there at all—none. It literally is just a case with something in it sitting on the floor. That's all that's there. Nothing is processing there. Nothing is running there at all.

Mr. Peter Tabuns: Has the Ontario government had an ongoing contract with Recall data for storage of material?

Mr. David Nicholl: Yes. We have two contracts. We have a very, very large contract for paper storage, and we have a much, much smaller contract where we have some secure storage for IT assets.

Mr. Peter Tabuns: Are computers or hard drives ever stored offsite with information kept on them?

Mr. David Nicholl: I've never seen it. This is very different. This was a specific contract used by a very small part of the OPS, typically for disaster recovery and for secure storage of things that they didn't want stored anywhere else.

Mr. Peter Tabuns: So would these be the backup tapes that we have just been talking about?

Mr. David Nicholl: No. All the backup tapes that are stored at Iron Mountain—a totally separate contract.

Mr. Peter Tabuns: What part of the OPS uses this data centre, Recall?

Mr. David Nicholl: The secure storage?

Mr. Peter Tabuns: Yes.

Mr. David Nicholl: Our cyber security area are the only people who use it right now.

Mr. Peter Tabuns: All right. You named Iron Mountain. We have Recall data. Are there any other companies or facilities that store data or data-containing equipment for the Ontario public service?

Mr. David Nicholl: We have our own data centres, obviously: Guelph, Kingston, Oshawa, Peterborough, plus some of the smaller jurisdictions we have storage in. I'm just trying to think if we have any—we could have outsourced contracts, for instance, where a processor like an IBM or an HP may be processing on our behalf. But no, as regards the type of storage you're talking about, archival or secure storage, that would be it.

Mr. Peter Tabuns: Okay. Was the information commissioner made aware of these sites and the sorts of information or hardware that were stored?

Mr. David Nicholl: As far as Guelph and everything, absolutely yes. In fact, they came and visited Guelph.

Mr. Peter Tabuns: Okay. Were they aware of Recall data?

Mr. David Nicholl: Probably not, but at that point we weren't storing anything there, so it would have been unlikely that we would have discussed it, frankly.

Mr. Peter Tabuns: So material has been stored at Recall since the IPC did her report?

Mr. David Nicholl: Yes, absolutely—since, yes.

Mr. Peter Tabuns: What's the origin of the material that was stored?

Mr. David Nicholl: It was with us in the OPS, and then it was securely stored at this facility in Mississauga.

Mr. Peter Tabuns: Can you tell us exactly what this material was? Are we talking hard drives? Are we talking about specific computers for specific individuals?

Mr. David Nicholl: I just start getting nervous when I get into that area, because that's the OPP area, and I don't want to tread into it; I really don't. It's IT assets that could be lifted and stored in a secure facility.

Mr. Peter Tabuns: So ones that you considered sensitive and would be the subject of any investigation.

Mr. David Nicholl: Could be.

Mr. Peter Tabuns: Could be?

Mr. David Nicholl: But there's no processing; that's the important thing. It's disconnected, in a secure case, sitting in storage on a shelf somewhere. That's all it is; no processing.

Mr. Peter Tabuns: Are there any other places where information or information technology assets are stored in this fashion?

Mr. David Nicholl: Not that I know of. Lots of OPS locales, of course. There's 2,000 sites around the province that we've got stuff in. But as regards a different facility, I'm not aware of any other ones. Recall is our biggest contractor for all of our archival stuff.

Mr. Peter Tabuns: Okay. I'll turn it over to my colleague.

The Chair (Mr. Shafiq Qaadri): Mr. Singh.

Mr. Jagmeet Singh: Just on that area—you don't have to disclose; the committee has the authority to require you to, but I don't want you to. I want you to apply your discretion, without naming names of who, but just to get a better picture of how this data is stored.

I understand that the data storage isn't data storage in the sense where it's cloud storage, that data is backed up on a server at Recall; it's actually physical assets that are left there. Am I understanding that correctly?

Mr. David Nicholl: There are no elements of backup, right. There's no connection, in fact; there's no wire between anything we run and there. So it's physically lifted, trucked and put there.

Mr. Jagmeet Singh: So if I put it in laymen's terms, it's acting as more of a warehouse than actually data storage.

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Mr. David Nicholl: Absolutely right. It's not data storage at all. You could be putting your briefcase there; it's exactly the same thing.

Mr. Jagmeet Singh: Okay. Subsequent to the privacy commissioner's investigation and report, data assets, so hard drives and other storage devices—actually, let's get into that. Would it be the hard drive of a computer? Would it be other sorts of zip drives? What types of data would you store there?

Mr. David Nicholl: The only other time that I'm aware of where this contract was used was when our cyber security people would use it as secure storage for their disaster recovery. These guys typically do WDHP investigations; that's what their jobs really are. If they're doing a WDHP investigation and they have taken data, they will back that data up. They're using that contract as their disaster recovery storage site; that's what they're using it for. That's traditionally what that contract has been used for.

Mr. Jagmeet Singh: Besides that specific example, in general, is it data drives in the sense of hard drives that are stored there in briefcases? Are they zip drives? Are they USBs? What's the actual type of data?

Mr. David Nicholl: I actually can't tell you the storage media, but I would guess it's some kind of removable disk. That's typically what they would probably use. I don't think they're using tape. They might use tape, but I don't think so. I think it's probably some kind of removable disk that they would use.

Mr. Jagmeet Singh: Okay. You're aware that search warrants were obviously executed at the data storage facility?

Mr. David Nicholl: I did hear.

Mr. Jagmeet Singh: Were there any other investigations where the OPP had to physically obtain assets, data or other data storage devices from your ministry?

Mr. David Nicholl: We've done a number of—

Mr. Jagmeet Singh: In relation to the gas plants.

Mr. David Nicholl: Oh, in relation to the gas plants? No.

Mr. Jagmeet Singh: Okay. Are you aware of any other sources of data or data storage or other facilities where the OPP investigated?

Mr. David Nicholl: No.

Mr. Jagmeet Singh: When you were contacted, did you provide a complete list of all the sites where data was stored in terms of the Ministry of Government Services?

Mr. David Nicholl: We would have done that as regards the OPS, yes.

Mr. Jagmeet Singh: Okay. Specific to the OPS, were there any other facilities that you're aware of that the OPP obtained search warrants for and investigated or obtained data?

Mr. David Nicholl: Not that I'm aware of at all, no.

Mr. Jagmeet Singh: Okay. If an FOI request is made, how does MGS process that with respect to stored or archived data?

Mr. David Nicholl: Do you know if the FOI process—

Mr. Kevin Costante: FOI processes typically go to the ministry involved. We would only be involved in FOI processes for our ministry. Basically, staff will look at their paper files, the electronic files that are on their desktop and any other pieces of material that they have around. For FOI requests, it has been policy that we do not go to backup tapes so that—I think in the 12 times normally related to—

Mr. David Nicholl: No, it's FOI.

Mr. Kevin Costante: Yes, that would be other investigations, but not standard FOIs. That's our standard FOI process.

Then they're released and signed to the requester. Sometimes there's a charge for searching, and when the money is provided, the documents are released.

Mr. Jagmeet Singh: Thank you. In this circumstance, in relation to deleted emails, if an FOI request is made, the only potential source of deleted emails would be archived data. Would an FOI request allow you to access archived data to obtain specific information that's requested?

Mr. David Nicholl: I would say that if somebody came to us and said, "Could you reload a tape to get some data from it?" we would do that. Yes, we would.

Mr. Jagmeet Singh: Okay. Just back—

Mr. Kevin Costante: Sometimes FOI requests are around historic things that may only be in the archives; they're 20 or 30 years old—land claims, for example. Yes, then the archives would look at their material.

Mr. Jagmeet Singh: Okay. You've indicated this—again, just to be very clear: The OPP has not requested information or material from your ministry in relation to the gas plants?

Mr. David Nicholl: The OPP—sorry?

Mr. Jagmeet Singh: Has the OPP requested information or data from your office directly?

Mr. David Nicholl: They would not have asked for data from offices, but they've absolutely talked to us.

Mr. Jagmeet Singh: That's fine.

Mr. David Nicholl: Please don't have any illusions. They have talked to us.

Mr. Jagmeet Singh: Right. I understand they have.

Mr. David Nicholl: Okay.

Mr. Jagmeet Singh: Have they requested, if not actual data, any materials from your office for their investigation? Papers, documents, any other—

Mr. David Nicholl: I don't think so. I want to be really cautious. To the best of my knowledge, I don't think so, no.

Mr. Jagmeet Singh: Okay. And just one more time to be very clear, are there any other offsite data storage facilities that store data devices, any sort of locations that the OPP have requested material from or have investigated or searched?

Mr. David Nicholl: Again, to the best of my knowledge, they have not.

Mr. Jagmeet Singh: Okay.

Mr. David Nicholl: But there are lots and lots of places where we store data across the OPS. We have 2,000 offices across the Ontario government. There's data in all of those 2,000 offices, just to be really, really clear.

Mr. Jagmeet Singh: Right. Would you be aware if the Premier's office or anyone from the government on the political side has requested to look at archive data in relation to the gas plants?

Mr. David Nicholl: I'm not aware of any.

Mr. Kevin Costante: I'm not aware of anything.

Mr. Jagmeet Singh: To be clear, by saying you're not aware, you don't know if it has happened or has not happened?

Mr. Kevin Costante: I don't know if it has or has not happened.

Mr. Jagmeet Singh: Okay. In terms of the data tapes, roughly how many of the backup tapes in relation to deleted emails and deleted information remain unsearched at this point?

Mr. David Nicholl: Can I just correct—

Mr. Jagmeet Singh: Yes, please, correct and clarify as much as you like.

Mr. David Nicholl: Okay. Deleted emails do not go to backup tapes, just to be really clear.

Mr. Jagmeet Singh: Right. The secondary storage.

Mr. David Nicholl: Deleted emails don't go to secondary storage even.

Mr. Jagmeet Singh: The secondary storage that gives you access to emails that you thought were deleted.

Mr. David Nicholl: No, absolutely not.

Mr. Jagmeet Singh: Okay.

Mr. David Nicholl: No, no, no. Again, it goes back to the structure of our email system. It's really, really important. We have Microsoft Exchange, which you all

use, which is our primary email system where you have a client piece, which is Outlook, that you're actually on your PC with, and Microsoft Exchange in the back end on a server. What we do is, after 30 days that it's on that system, it simply drops into what we call our secondary storage. The only reason it does this is that it's cheaper. It's just cheaper storage because people tend not to go back to that. So there's no archiving. It's not an archiving system in our language. It's simply a cheaper storage mechanism. That's all it is.

Mr. Jagmeet Singh: Sure. And this cheaper storage mechanism is what is now available for searching emails that were otherwise thought to be deleted?

Mr. David Nicholl: No. No, not at all. When people go in and search their emails, they're seeing both their primary and their secondary storage, because to an end user there is no difference. It looks exactly the same. It's got a little symbol beside it when it's been sent off to the secondary storage, but that's the only difference that there is.

Mr. Jagmeet Singh: There may be a disagreement in terms of our language, which is fine, but the Privacy Commissioner was very stark in her language in asserting that there are emails that were indicated to be deleted but then afterwards it turned out that those emails were available.

Mr. David Nicholl: Right.

Mr. Jagmeet Singh: I'm referring to those emails.

Mr. David Nicholl: Yes, I got it.

Mr. Jagmeet Singh: My question is, those emails are now available; they're accessible by means of data tapes. Is that correct?

Mr. David Nicholl: No.

Mr. Jagmeet Singh: That is what I understand is being said by the commissioner—

Mr. David Nicholl: Basically what happened is that Mr. MacLennan's emails were found in the secondary storage piece only, not on tapes—secondary storage. The reason it wasn't found when we went to look for it was that the primary—the Microsoft Exchange piece at the front end had been deleted.

In actual fact you had this secondary storage for his emails that there was no connection to. There was no way of getting there. When you went in to look for his email, his email was gone; it was not there. The only reason we found it was, when you guys asked us to go searching through an e-discovery method, because we actually don't own that, we found what is called an orphaned Enterprise Vault—that's where the word "orphan" comes from—because it actually wasn't connected to a primary email account. There was no primary email account left.

Mr. Jagmeet Singh: Fair enough.

Mr. David Nicholl: He would have thought it was gone, but in actual fact—and I'll be very honest: There was a bit of an operational snafu going on. We thought that when you deleted the primary email account, both went. We had a period of time where both didn't go, just the primary went. The secondary storage was left.

Mr. Jagmeet Singh: Fair enough. That's useful.

Mr. David Nicholl: That's why we found it.

Mr. Jagmeet Singh: Fair enough. With respect to the data tapes that are separate from the deleted emails, how many data tapes are still left to be searched?

Mr. David Nicholl: There are 3,226.

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Mr. Jagmeet Singh: Do you have any questions?

Mr. Peter Tabuns: Yes, I do have some questions, as a matter of fact. In your last presentation here, you were quoted as saying that political staffers are not generally trained on the government's email system unless a minister asks for it, including the archiving of records. Did ministers regularly ask that their staff be trained?

Mr. Kevin Costante: In my experience, no. Most staff are young and they know how to use email, and they go and do that. Material was always provided in transition binders around the proper way to keep material that's important, that needs to go to archives.

Mr. Peter Tabuns: So, in fact, every new staffer coming in would have gotten a transition binder with instructions on how to maintain and archive records under the ARA, the Archives and Recordkeeping Act. Is that correct?

Mr. Kevin Costante: The material was in the transition binders. Whether every single staff member got it, I can't—

Mr. Peter Tabuns: But if you were a staffer and you came on board, you got a transition binder?

Mr. Kevin Costante: You would think they would read the transition binder.

Mr. Peter Tabuns: Sometimes they do, sometimes they don't, but everyone was provided with that information. And how long have people been informed? How long have they been getting these transition binders with instructions on how to maintain their emails?

Mr. Kevin Costante: I can go back to 2003, at least.

Mr. Peter Tabuns: That's fine. When someone is leaving and they need to transfer material to the Archives of Ontario, do they come to you about the transfer of their material?

Mr. Kevin Costante: They can come to us for advice or they go to the archives for advice. Normally, there is a records retention schedule, and they are supposed to follow that. That sets out the length of time that things are supposed to be kept and what's supposed to be kept and in what series. There are Common Records Series that they do that in. Then it's provided to the archives, and then it's actually up to the archivist as to what is actually kept or not.

Mr. Peter Tabuns: And did people regularly come to you, asking for assistance in preparing this transfer of archive material?

Mr. Kevin Costante: I think the archives gets it. I don't think they come to the ministry all that much.

Mr. David Nicholl: It's not frequent. I know, for instance, we just did Premier Davis's—he came in for his last—he gave over quite a lot of stuff, actually, very, very recently—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. To the government side: Mr. Delaney.

Mr. Bob Delaney: Good afternoon, Mr. Costante. Thank you very much for coming back to appear with us a second time. Congratulations on your retirement.

Mr. Kevin Costante: Thank you.

Mr. Bob Delaney: You don't look a day older than you did last month.

I'd like to just continue down the line of questioning that has been going around the table here on the issue of backup tapes. The reason that the OPS retains backup tapes is for disaster recovery purposes. Correct?

Mr. Kevin Costante: That's correct.

Mr. Bob Delaney: So the tapes, then, are not a complete archive of the records created, sent or received by an individual?

Mr. David Nicholl: No.

Mr. Bob Delaney: Okay. Are the tapes considered a normal part of the record-keeping environment?

Mr. David Nicholl: No.

Mr. Bob Delaney: Do we normally include backup tapes in our legal document disclosure protocols?

Mr. David Nicholl: I don't think so.

Mr. Bob Delaney: Okay. So in light of the context of the committee's motion, does the existence of backup tapes necessarily mean that those tapes contain records that are responsive to the committee's motion?

Mr. David Nicholl: We wouldn't have any idea at this point.

Mr. Bob Delaney: In other words, you can't verify that, until the tapes are restored and have been searched.

Mr. David Nicholl: That's correct.

Mr. Bob Delaney: And indeed, it's possible that the tapes can be restored and the information searched and not yield any records that have not yet been disclosed and are responsive to the committee's motion.

Mr. David Nicholl: That is correct.

Mr. Bob Delaney: Roughly how many gigabytes are on a tape?

Mr. David Nicholl: I don't know.

Mr. Bob Delaney: Would it be stored in gigabytes or terabytes?

Mr. David Nicholl: It's gigabytes.

Mr. Bob Delaney: All right, let's see. The last time, Mr. Costante, that you appeared as a witness for the government, we asked you a lot of questions that, mercifully, I am not planning on revisiting, but what I would like to do is to begin by asking you a bit about the changes that you've witnessed within the government before your departure, which was only last month.

As you confirmed the last time you were here, through a number of correspondences with the committee as well as with the Integrity Commissioner herself, the Ministry of Government Services acknowledged that there were, in fact, circumstances that did not allow for the full recovery of some emails, not as a result of any type of interference but rather because of a technical oversight that was not known at the time, which I think you described earlier. Correct?

Mr. Kevin Costante: That's correct.

Mr. Bob Delaney: Okay.

Mr. David Nicholl: I wouldn't say it was not known at the time. I think we made an oversight.

Mr. Bob Delaney: Okay. I'll accept that. What we know is that, as soon as the issue was identified, MGS worked very hard to remedy the situation and ultimately turned over all responsive documents that had been archived into what was referred to as the Enterprise Vault. Is that right?

Mr. David Nicholl: That's correct.

Mr. Kevin Costante: That's correct.

Mr. Bob Delaney: Okay. At your last committee appearance, you said, and I'll use your words, "There was no intention to mislead or not inform the privacy commissioner. I met with the staff who provided information and asked them that very question. I was assured by all of them that there was no intention to mislead her."

"Having said that, we have taken responsibility for the mistakes."

Then, in response to how the staff had responded based on the policies and procedures that were in place at that time, you said, "There were records, and when we looked into the system, as a result of the motion from this committee, we found them. Obviously, that was a mistake on our part. We should have verified, not just responded on the basis of what our policy was. That's, again, why we've apologized to the privacy commissioner. We should have done more."

So I was hoping, with all of this behind us—can you confirm to the committee again today that, during the ongoing investigation by the Information and Privacy Commissioner, your office had never intentionally left out any information relevant to the work of the commissioner on this particular issue?

Mr. Kevin Costante: Yes, I can confirm there was no intention to mislead on my part or on the part of the staff that met with the IPC during the course of her investigation.

Mr. Bob Delaney: As a former deputy minister at the Ministry of Government Services, then, I think it would be fair to say that you've seen quite a significant number of changes, certainly on your watch and certainly over the past 12 months, on how the government handles the processes and practices of document management and retention going forward. Would that be a fair statement?

Mr. Kevin Costante: Yes, there has been. There was a number of recommendations in the IPC report which the ministry, in conjunction with the Premier's office, followed up on. There were also some recommendations around legislative changes; I understand, post my retirement, the government announced its intention to table an accountability act which would address some or all of those recommendations for legislative change.

Mr. Bob Delaney: Since your last appearance, a number of current government staff members have been called to testify before the committee, and we've been consistent in asking them whether or not they have been trained on all of the new initiatives under the new gov-

ernment. In fact, we've received some very positive feedback from the Information and Privacy Commissioner. Among the things that she's been quoted as having said is, "This government, with respect to my investigation and the work that we have done with the government, has been very forthcoming." She also said, "Any co-operation we needed was there." She also said, "We've had very good feedback from the government."

After all this is said and done, the changes that the government implemented will certainly affect the future to ensure that no government finds itself again in this same situation. Could you confirm that, to your knowledge, all staff have been trained on the new methods?

Mr. Kevin Costante: I think that in response to the privacy commissioner's report, training was developed for political staff, and as I understand it, all political staff were trained on this. Within the OPS, we've had long-standing training regarding records management, and I think in the last couple of years there's actually an online version that staff can access at any time.

Certainly, given the issues around the gas plants, there's a heightened awareness about the need for proper records management, and there has been lots of talk at all levels within the OPS about the importance of this.

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Mr. Bob Delaney: It's also fair to say that on the watch of the current government, the technology itself has progressed in leaps and bounds since the day the government first took office.

Ms. Lisa MacLeod: Point of order, Speaker.

The Chair (Mr. Shafiq Qaadri): "Chair," thank you. Ms. MacLeod, point of order.

Ms. Lisa MacLeod: The member seems to be making a statement rather than a question.

The Chair (Mr. Shafiq Qaadri): I'm sorry, Ms. MacLeod, you find that objectionable. Do continue, Mr. Delaney.

Mr. Bob Delaney: Mr. Costante?

Mr. Kevin Costante: Sorry. Could you repeat the question?

Mr. Bob Delaney: Is it fair and reasonable to say that during the years that the government has been in office, the technology with which we manage and store information has changed in leaps and bounds?

Mr. Kevin Costante: Yes, it has changed immeasurably since I started in the public service 35 years ago, which was primarily paper, to now primarily electronic.

Mr. Bob Delaney: Okay. So would you be able to reflect with the committee today on some of the changes that you're aware of and what your thoughts are on the new approach to the Open Government mandate that has been established?

Mr. Kevin Costante: Well, the Open Government mandate was announced by the government a number of months ago in order to provide more transparency. There are three components to it; I'll see if I can remember all three. One of them is around open data, making our datasets available and usable by the public. The second one, I think, is around open information, so just making

the things that we produce as the civil service and a government available to the general public so that they know what's going on within government. Then, a third one is more openness around involving the public in the policy-making and the public realm so that they have a greater say and greater involvement in public affairs.

That's the initiative that has been undertaken, and there has been a series of activities that have gone on related to that.

Mr. David Nicholl: Do you want just a quick word on the technology side?

Mr. Bob Delaney: Yes. I was just actually going to ask you, Mr. Nicholl, as the acting deputy minister, what you'd like to add.

Mr. David Nicholl: Obviously, there's been a huge change from a technological perspective over the last 10 or 15 years where you all have gone far more mobile than you were 15 years ago or 10 years ago. You would probably have been sitting at your desks; you would have been on a PC, but you wouldn't have been lugging it around with you. Today, you're all on BlackBerrys. You're all on mobile devices. You're carrying laptops. Clearly, from a perspective of the use of technology, wherever you happen to be is where you're using your technology now. It has been a dramatic change as regards how people use it. So I think that's very fair to say, and it has been changing over the last 30 years as well. We have gone from paper to where we are today.

Mr. Bob Delaney: Some of us are old enough to remember that there was civilization as we knew it before the age of computers.

A few weeks ago, both the Premier and the Minister of Government Services announced that they would be introducing legislation that, if passed, would strengthen political accountability, increase oversight and increase transparency across government and across the broader public sector. That proposed legislation would build on the province's Open Government Initiative and continue to demonstrate that the new government is looking forward when it comes to accountability toward Ontarians.

I understand that this legislation has been in the works for some time. As I finish my time here, I'd like to ask you just a little bit more about these initiatives because they bear on what the committee is actually trying to accomplish.

The government has undertaken, as both of you have noted, to open up government and become among the most open governments in Canada. From your experience, and I'm speaking broadly because the legislation hasn't yet formally been introduced, I'd like to get a sense of how you see the impact of this level of openness and transparency on government—

Mr. John Yakabuski: You mean when you appointed Sandra Pupatello over the holiday?

Mr. Bob Delaney: I believe, Chair, I have the floor at the moment. Thank you.

Perhaps you might give us a sense of how you see the impact of this level of openness and transparency in the government?

Mr. David Nicholl: I can do it from data, if you want.

Mr. Kevin Costante: Okay.

Mr. David Nicholl: I can certainly talk to the open data side because we've been at this for quite a long time, actually, where today or in the past, we've very much owned how information and data are actually distributed outside of government. The open data movement and where we've gone to is very much now turning it around to where we want to actually put data out to people, where they can use it in its raw form. I mean, that's effectively what open data is. What it allows people to do is, rather than waiting for government to deliver reports—yes, typically some kind of report format—governments will actually be putting raw data sets out there where people can take that, manipulate it and produce their own reports.

I would say Ontario is probably a little bit behind the eight ball when it comes to the aggressiveness of putting data out there. We have about 180 data sets out that we put out at the end of October 2012, when we launched the open data catalogue. We have another up to 1,000 data sets that, in fact, will be voted on at some point by Ontarians as to where they feel they would most like to get their data, which data sets are of most interest, which ones they can actually take benefit of.

If you look around the world, there has been a tremendous response to entrepreneurs and small businesses, actually, taking advantage of this and making businesses out of it. Whether it's something as simple as, "How long is my bus going to be before it comes?" or whether it's something like, "Which is the best hospital to go to for a broken leg?" there are lots and lots of people doing some really cool, interesting things with data right now.

On the open data side, it's very exciting. There are great strides going on around the world, and Ontario is going to be right in the thick of it.

Mr. Bob Delaney: I am actually going to resist my temptation to get into the minutiae and the bits and the bytes with you on—

Ms. Lisa MacLeod: Please do.

Mr. Bob Delaney: Although my colleagues would very much like for me to bore them to tears—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, if there is an official question—

Interjections.

Mr. Bob Delaney: I noted, Chair, that even with nine seconds to go, the Conservatives resisted asking a question on wind energy, so I can only return the favour.

Thank you very much, Mr. Costante and Mr. Nicholl, for your time today. We appreciate you joining us.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the Conservative side: Ms. MacLeod.

Ms. Lisa MacLeod: I will try to resist asking off-topic questions—

The Chair (Mr. Shafiq Qaadri): Resistance is futile, Ms. MacLeod.

Ms. Lisa MacLeod: —but I would ask that the honourable member resist as well the temptation for a point of order during my last 10 minutes.

Just two quick questions, actually, if you don't mind, and then I'll cease. The question that I have now is, has the removal of hard drives from the government's backup facility meant that the government's response to demands by the justice committee would be somehow delayed?

Mr. David Nicholl: No.

Ms. Lisa MacLeod: Okay. So say, in theory, the tapes are gone from the government's archive facilities. Are there copies that can be accessed by government?

Mr. David Nicholl: We have our backup tapes.

Ms. Lisa MacLeod: Oh, so you do have the backup tapes. So our request for data from backup tapes made by this committee in the manner described on July 22 in that memorandum is still possible?

Mr. David Nicholl: If you ask us for specific backup tapes, we'll go look for them, absolutely.

Ms. Lisa MacLeod: Fantastic. Are the Kathleen Wynne backup tapes still available for creating documents that can be presented to this committee?

Mr. David Nicholl: To the very best of my knowledge, yes, they are.

Ms. Lisa MacLeod: Okay. And to your knowledge, is it possible that there are emails from the current Premier on the backup tapes obtained by the OPP or on the hard drives?

Mr. David Nicholl: To the best of my knowledge, the OPP have no backup tapes.

Ms. Lisa MacLeod: So just on their hard drives, they would. And on those hard drives, would there be any emails?

Mr. David Nicholl: I honestly and truly really don't know what could be on those hard drives. I really don't know.

Ms. Lisa MacLeod: All right. I appreciate both of you coming in today. Thank you very much. Good luck in your new position and certainly good luck in your retirement.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. To Mr. Singh.

Mr. Jagmeet Singh: Thank you very much, Mr. Chair. We have no further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Therefore, back to the government side. Mr. Delaney, one more opportunity for the minutiae.

Mr. Bob Delaney: Thank you, Chair. I believe we're done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Thanks to you, Mr. Costante, and to you, Mr. Nicholl, for your presence. You are officially dismissed.

We do have a motion before the committee and I would invite Ms. MacLeod to present it.

Ms. Lisa MacLeod: Under my name, I move that the Standing Committee on Justice Policy request from the Ministry of Government Services all documents and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received by Kathleen Wynne, including all correspondence from the aforementioned individual stored on the ministry's RAID servers; that the search terms include any and all proxy names including but not limited

to the following: Project Vapour, Vapour, Project Vapour Lock, Vapour Lock, TransCanada, TCE, Greenfield, Greenfield South, Project Fruit Salad, Project Banana, Project Apple, Oakville gas plant, Mississauga gas plant, EIG; that the documents and electronic correspondence be provided in an electronic, searchable PDF.

I look forward to the support of all of my wonderful colleagues.

1600

Mr. John Yakabuski: Good motion.

Ms. Lisa MacLeod: I have support from John Yakabuski.

The Chair (Mr. Shafiq Qaadri): Thank you. Just before: Colleagues, you are officially dismissed. Thank you.

Ms. Lisa MacLeod: I know you're really excited to see this debated.

The Chair (Mr. Shafiq Qaadri): Any questions? Debate?

Mr. Bob Delaney: I gather, in listening to the testimony given by the two witnesses, Mr. Nicholl has already said there is no archive system for the Premier's office. I then wonder, what is it that you're asking for? I have no trouble giving you something that exists, but all I would like to clarify is, are you asking for something that doesn't exist?

Ms. Lisa MacLeod: No. They said that they had tapes both for the Premier while she has been in office and for the Premier before she took office. There are 1,233 backup tapes, dating as far back as 2010 and as recently as 2013.

Mr. Bob Delaney: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Any further questions before we move to the vote?

Mr. Peter Tabuns: Give me a few minutes just to read this.

The Chair (Mr. Shafiq Qaadri): I will let you catch up, Mr. Tabuns.

Mr. Jagmeet Singh: I have a question that will buy some time for my friend.

The Chair (Mr. Shafiq Qaadri): Please proceed with your purchase.

Mr. Jagmeet Singh: I was going to do that anyway, even if you didn't ask for the time.

Just in relation to the way that the motion is worded—I appreciate the search terms that we're looking for. I guess this is specific maybe to—maybe the Clerk can provide some guidance. Will this search provide documents that come up with a positive hit for these terms only, or will this also require additional information on top of that?

The Chair (Mr. Shafiq Qaadri): An answer is not forthcoming. The ministry will deal with it.

Mr. Jagmeet Singh: Which is fine, because the way it's worded, I think it will provide everything, but I would like it to be separated in the sense that the terms that show positive be provided in a way that's identifiable so that we can actually get to the heart of the matter. There may be other information that's useful as well, but—

The Chair (Mr. Shafiq Qaadri): There is a phrase in the motion, “including but not limited to the following,” just for your information.

Ms. MacLeod, you had something?

Ms. Lisa MacLeod: I’m just curious. Are you suggesting that we separate—so we ask for any and all proxy names and then “including but not limited to the following,” but you want those separated so that we can search under—for example, if Kathleen Wynne was named under Project Fruit Salad or Project Banana?

Mr. Jagmeet Singh: Right. I know you just love saying those names.

Ms. Lisa MacLeod: Very creative. I think the Liberals are bananas, so it was aptly put.

Mr. Jagmeet Singh: The reason is, if we have data—if it’s all electronic, this might be all moot, because if it’s searchable electronically, I don’t think it makes that much of a difference. If we’re given gigabytes of data and we have the data that shows Kathleen Wynne plus any of these terms, that might be the information that we’re more interested in than the other information. But I’m not overly concerned. It will all be electronic.

Ms. Lisa MacLeod: My staff tell me that we’ll be able to search it, because it will be searchable through the PDF.

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Delaney.

Mr. Bob Delaney: It’s the privilege of members to ask for anything that exists. What I would like to emphasize again is that my understanding, based on the testimony that has been given, is that some of the assumptions behind here include archives that don’t exist such as whatever it is that does exist. You’re welcome to have it, but, frankly, this seems to be stuff you’ve already got.

Ms. Lisa MacLeod: No, we don’t have it. This is information that we have requested—so there are backup tapes. Throughout my questioning, I had requested what the time frame would be for the Ministry of Government Services to get through the tapes. They said anywhere between two to four hours per tape. I asked them if it was possible for them to prioritize, if this committee did so, and they said yes. What I’m simply asking them for, based on the respondents 1 through 13 from Mr. Craig MacLennan, Ms. Kathleen Wynne, Mr. Chris Bentley and Mr. Brad Duguid, Mr. Dalton McGuinty, Mr. David Livingston, Mr. Chris Morley, Mr. Jamison Steeve, Mr. Sean Mullin, Mr. John Brodhead, Mr. Dave Gene, Ms. Laura Miller and Mr. John Fraser, which accumulated to a total of 3,226 backup tapes—if we could prioritize them and for them to start with Ms. Kathleen Wynne, who has been mentioned on 1,233 backup tapes. They said if we asked them as a committee to produce those documents, that’s what they would start with, and they would provide it to us under the time frame. So I wish you were listening to my questioning because that’s what I got.

I took it upon myself, then, to speak with my staff and asked them to provide me with a draft motion that I did bring to the Clerk, who then retyped that out. So we’d

like this to stand, and I’d like to put it to a vote because I think it’s an important piece of the puzzle for us. That’s a substantial number of documents—

Mr. John Yakabuski: We’ve got it in the order we want them.

Ms. Lisa MacLeod: Yes, and we’d like to prioritize that.

The Chair (Mr. Shafiq Qaadri): Thank you.

Mr. Bob Delaney: Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, but just before you begin—with regard to your comment, obviously the request can be made on a broad basis. That which exists will be turned over; that which does not exist will not be turned over. That’s obviously the path that the ministry itself will follow.

Go ahead, Mr. Delaney.

Mr. Bob Delaney: Chair, throughout these proceedings, the government has done its best to comply with these requests and overwhelmingly has voted—

Mr. John Yakabuski: Well, they’ll comply with this one.

Mr. Bob Delaney: —in favour of document disclosure. Based upon the testimony of the individuals involved, if Ms. MacLeod’s numbers are accurate, and to use, for example, Kathleen Wynne, who has been mentioned on 1,223 tapes—just to do the math—one is looking at between 2,446 hours’ and 4,892 hours’ worth of work to copy the tapes on which just that one name has appeared on to a disk and to convert it into a searchable format.

So accepting that between 2,446 and 4,892 hours of work is non-trivial, I would actually ask whether or not my colleagues would permit us, before we go to a vote, a recess because I’d actually like to do a little consultation on this, or would you be willing to stand this down for a session?

I’m trying to be helpful here. If you want to have a vote, you can have a vote. We’ll call a recess anyway, but I’m actually trying to find a way to help you in doing something that, at the extreme, is going to take, for one person, nearly 5,000 hours of work.

Ms. Lisa MacLeod: I will call the vote, and I will say this before the government takes a recess: I do have the letter that arrived to this committee on July 22, 2013, to you, to Dr. Shafiq Qaadri, and it does indicate what those initiatives are. I do deem it a priority. The Premier could have told the truth, and we wouldn’t be going through this. But throughout the entire period, we were told that the cancellation would be \$40 million. Lo and behold, it’s \$1.1 billion.

As much as I appreciate my colleague—and he has been helpful; I will say that—we have now made a decision to prioritize this. I’ll ask the Clerk to make copies just in case Mr. Delaney didn’t get the copy at the time of this, and I’d like to put it to a vote, if that’s possible.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. Are there any further comments or questions?

Mr. Tabuns.

Mr. Peter Tabuns: Just to be clear what we’re voting on, Mr. Chair?

The Chair (Mr. Shafiq Qaadri): The motion before the floor, Mr. Tabuns.

Mr. Peter Tabuns: This one?

The Chair (Mr. Shafiq Qaadri): I'm sure you've absorbed it by now.

Mr. Peter Tabuns: Well, I've absorbed this, but I was also hearing the discussion about priorities. This is the motion that's before us?

The Chair (Mr. Shafiq Qaadri): Yes, yes, yes.

Mr. Peter Tabuns: Fine.

The Chair (Mr. Shafiq Qaadri): All right. Any further comments before we move to the vote?

Mr. Bob Delaney: A 20-minute recess, please, Chair.

The Chair (Mr. Shafiq Qaadri): Which is your prerogative. Therefore, we'll be in a 20-minute recess. The vote has been called, and we'll resume in 20 minutes, at 4:30-ish.

The committee recessed from 1610 to 1631.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We are now back in session. I understand that the originally presented motion will be withdrawn. Ms. MacLeod, that's correct?

Ms. Lisa MacLeod: Don't get too excited, Liberals. I'm just joking, Speaker.

The Chair (Mr. Shafiq Qaadri): We'll try to contain it. Thank you, Ms. MacLeod. I need you to officially withdraw it.

Ms. Lisa MacLeod: Sure. I officially withdraw the first motion in order to put forward a second motion to ensure that there is no duplication of documents.

Instead, I move that the Standing Committee on Justice Policy request from the Ministry of Government Services all documents and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received by Kathleen Wynne, stored on the ministry's backup tapes as referenced in Deputy Minister Costante's correspondence to the committee;

That the search terms include any and all proxy names, including but not limited to the following: Project Vapour, Vapour, Project Vapour-lock, Vapour-lock, TransCanada, TCE, Greenfield, Greenfield South, Project Fruit Salad, Project Banana, Project Apple, Oakville gas plant, Mississauga gas plant, EIG;

That the documents and electronic correspondence be provided in an electronic, searchable PDF.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there comments? Comments, discussion, questions?

Mr. Bob Delaney: Chair, may you get all of her comments about the vapour from her tea kettle, her banana bread recipes, anything to do with apple pie and anything else your heart is content with receiving. We're fine with this.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Any comments from the NDP side before we proceed to the vote?

Mr. Peter Tabuns: No.

Mr. Jagmeet Singh: No comments.

The Chair (Mr. Shafiq Qaadri): All right. Thank you. Those in favour of this motion? Those opposed? The motion is carried.

If there's no further business before this committee—

Mr. Bob Delaney: Just to mention, Chair, based upon the estimates given by the two witnesses who spoke to us today, it should be worth noting that just to do the data extraction will probably take the bulk of this calendar year. I just want to make sure that that's on the record. They're looking at somewhere between 60 and 120 weeks of work.

The Chair (Mr. Shafiq Qaadri): I trust the government will return to resume the committee hearings for that. Thank you very much, Mr. Delaney.

The committee is adjourned.

The committee adjourned at 1633.

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Standing Committee on Justice Policy

Members' privileges

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 25 March 2014

Mardi 25 mars 2014

The committee met at 0845 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the Standing Committee on Justice Policy to order. Regrettably, our 8:30 a.m. witness, Mr. Michael Ivanco, president of the Society of Professional Engineers and Associates, has yet to materialize. Therefore, we will be in recess until this afternoon—no further committee business.

Ms. Lisa MacLeod: Point of order.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, a point of order.

Ms. Lisa MacLeod: I'm just channelling Mr. Delaney. Just a quick question: What happens with the witness who did not show up?

The Chair (Mr. Shafiq Qaadri): We have various options. We can continue to wait, as here. We can perhaps try to reschedule for another day if the committee thinks it urgent or imperative that we be here. We can issue a Speaker's warrant, can we not? And we can send out some chains, probably. But in any case, if it's absolutely necessary to have this witness here, there are some recourses, and I guess we can deliberate that.

Ms. Lisa MacLeod: Okay. Thank you, Chair.

Mr. Peter Tabuns: Thank you.

The Chair (Mr. Shafiq Qaadri): The committee is in recess.

The committee recessed from 0846 to 1501.

MR. CHUCK ROTHMAN

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. J'invite notre prochain présentateur, Mr. Chuck Rothman, representing Wortzmans—Charles Rothman—to please come forward, be seated and be affirmed ably by our Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Chuck Rothman: I do.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Rothman, you have a five-minute opening address,

beginning then with the PC side for questions in rotation. Thank you, beginning now.

Mr. Chuck Rothman: I don't have any opening address.

The Chair (Mr. Shafiq Qaadri): That, sir, must be a record. So we will now pass it to the PC side. That was 3.5 seconds. I congratulate you, Ms. Thompson?

Ms. Lisa M. Thompson: Very good. Thank you very much, Mr. Rothman, for being here this afternoon. I understand that you've been here before and testified before this committee. In your previous testimony you gave an explanation of your working relationship with the Ministry of Government Services as well as the Ontario privacy commissioner. I was wondering if you could kindly remind us of that working relationship with both.

Mr. Chuck Rothman: Well, I didn't work with the Ministry of Government Services.

Ms. Lisa M. Thompson: Oh, okay.

Mr. Chuck Rothman: I worked with the Information and Privacy Commissioner. I was asked to review a report that the Ministry of Government Services provided to the Information and Privacy Commissioner concerning the potential recovery of deleted emails. I read the report. I discussed it with them. I explained certain technical aspects that were in the report. I gave them a list of follow-up questions to pose to the Ministry of Government Services. Subsequent to that, I was given the answers to those questions. Then, I assisted the Information and Privacy Commissioner in preparing her report.

Ms. Lisa M. Thompson: Okay, very good. So you would say you would have a comfortable knowledge now of how government stores and retrieves backup emails?

Mr. Chuck Rothman: I have cursory knowledge.

Ms. Lisa M. Thompson: Cursory knowledge?

Mr. Chuck Rothman: I wouldn't say I have a very comfortable knowledge.

Ms. Lisa M. Thompson: Thank you. In your experience, Mr. Rothman, have you ever come across a situation in your career where an inquirer knew there was deleted information, like we do with regard to the gas plants, on an electronic source of many different kinds, and that inquirer told you specifically what to look for and your search came up fruitless? Did that ever happen to you?

Mr. Chuck Rothman: Yes.

Ms. Lisa M. Thompson: Okay. How? Can you explain how specific searches may come up empty-handed, so to speak?

Mr. Chuck Rothman: If emails are no longer there, if the emails are no longer on the system and you try to search for them and they're not there, you're not going to find them.

Ms. Lisa M. Thompson: All right.

Mr. Chuck Rothman: Maybe I don't understand what you're asking.

Ms. Lisa M. Thompson: In terms of what we're looking for and where we need to look for it, based on the reading I did in preparation for today, you have your backup tapes and you have your hard drives and whatnot. Clearly you can find it somewhere if you look deep enough.

Mr. Chuck Rothman: Well, sometimes.

Ms. Lisa M. Thompson: Can you explain that, please?

Mr. Chuck Rothman: Sure. It all depends on how the systems are configured and what procedures are being followed. For instance, if I receive an email and the system is designed so that it automatically makes a copy of that email as soon as I receive it, then there are two copies of that email. So if I delete one copy, there's another one that could be recovered, if you know where to look. It's very rare that systems are designed like that, because then what they're doing is, they're copying every single email that you get.

Alternatively, the way systems generally are designed is that you'll receive an email; it will be in your mailbox and that will be the only location for it. Then, at some time after the email has been sitting in your mailbox, it will get backed up, usually onto tape, and that may be the evening after you've received the email, if you do backups every day. Sometimes backups are only done once a week, but generally nowadays backups are done every day. So the email will be backed up at the end of the day.

Those backups are designed as disaster recovery backups. They're so that if the server fails or some disaster occurs, you can restore the server system back to the way it was at the time that it was backed up. They generally aren't used—in a lot of cases they are not used as long-term archival storage because of the way the technology works. They're generally basically a snapshot of what's there at the time the backup is made, and because they're made for disaster recovery, they aren't kept very long. Usually they will be kept for a day, a week, maybe a month, but they aren't kept very long because you're creating a new snapshot every day. The snapshot that you have today is more up to date than the snapshot you made a week ago, and so why do you need to keep the one from a week ago?

But there is another system that the government has implemented—and a lot of organizations now implement this, which is called by various terms. The generic term, or at least the generic term that I use, is an "archiving system." It's also called a vault. It's also called offline storage. There's a number of different terms for it.

Basically it can have two different roles. It can either be used just as a way to lower the cost of storing emails so that if you want to keep an email for a long period of time—it's unlikely you're going to be accessing it very often, but you want it there for the time that you do access it. Basically what it does is, it moves it to a different location physically so that it can free up space on your primary server for new emails.

The other way that these systems work is that they are actually designed as retention archiving systems. Once an email will move to the system, it will be in the retention system and you can't delete it or anything, but it depends on how the system is configured.

From my understanding of the way the government's Enterprise Vault system is configured, it's configured for the former definition, as I said, as offline storage or—not offline storage, as secondary storage. Physically, the email will not be on the main server; it will be on a secondary server. But from the user's perspective, it doesn't make any difference. It looks like it's all in the same place.

1510

Given all these different areas where you can have copies of emails, if you have situations like that, if you want to recover an email that no longer appears in a person's mailbox, you can look in other locations and see if it's there. Now, if it has been out of the mailbox for longer than the time that backup tapes have been retained—if you're only keeping your backup for a week, and it was deleted two weeks ago, then it's not going to be on any backup tape anymore. If the archiving system is configured so that when you delete the email from your mailbox, it actually does delete it from the archiving system, then it won't be there either.

So it's possible, depending on how things are configured, that when you delete an email, it actually does delete the email and it's no longer available.

Ms. Lisa M. Thompson: Thank you for distinguishing that. Moving along, the Ministry of Government Services sent a letter dated July 22, 2013, claiming there were roughly 1,233 backup tapes with emails that came from the Premier's email account—Kathleen Wynne's email account, to be specific—that could be recovered if the committee requested it. Last week, we asked them to recover this information, with very specific search terms that we defined in a motion, if everyone recalls. If that request comes back unresponsive, is there a reason to believe, based on your experience, that there is, let's say, foul play or something that could be still withheld?

Mr. Chuck Rothman: If I understand you correctly, if they search the backup tapes and they don't find any responsive emails, you're asking if the emails could still be there?

Ms. Lisa M. Thompson: Yes, that's what I'm asking.

Mr. Chuck Rothman: Well, if they search them properly and they don't find anything, then they aren't there.

Ms. Lisa M. Thompson: All right. I had to ask. That's very good.

Last week, we also directed the committee to retrieve backup tapes that contained emails authored by Kathleen Wynne, the current Premier. The Ministry of Government Services and Cabinet Office claim that each tape could be processed at a processing rate of two to four hours per tape, which means it could take anywhere from, say, upwards of 2,500 hours to 5,000 hours—rounding up, of course—to retrieve the data that was stored on the 1,233 tapes.

Are you familiar with the process used to retrieve this data? Do the numbers that have been shared with us from the Ministry of Government Services make sense? And then I have a supplemental question to that.

Mr. Chuck Rothman: Okay. If the Ministry of Government Services is doing the restoration and searching themselves, those numbers do make sense, because I would not expect the Ministry of Government Services to have highly specialized equipment and techniques to be able to do this. They don't do it on a day-to-day basis, or probably ever, to restore over 1,000 tapes, so they would have to go through their normal tape-restoration procedures, which are really designed to restore one tape at a time. So that number doesn't seem out of line to me.

Ms. Lisa M. Thompson: Okay. If I may, your answer implies that there could be a faster method. Can you explain what faster methods could be employed?

Mr. Chuck Rothman: Okay. Working in electronic discovery, there are sometimes calls to restore backup tapes, because the information is not available anywhere else and they need to be restored to, hopefully, find the information on the backup tapes. So techniques and software and tools have been designed to deal with large volumes of tapes more efficiently. Third party vendors who specialize in this type of work have that type of software.

Basically, what it does is, instead of having to copy all the information off the tape onto a server and then search it, they actually search the tape itself and only copy off what they need, which makes the process go somewhat faster—not that much faster, because you're still limited by the physical rate at which you can move the tape and read the tape. So it will still probably take two to four hours a tape, but you don't have the secondary step of searching everything afterwards because you're combining it together.

Also, the specialized vendors will do a number of tapes concurrently. So even though the total number of hours may be the number you said, in actual elapsed time, it will be quicker.

Ms. Lisa M. Thompson: Okay. Very good.

How much time do I have left?

The Chair (Mr. Shafiq Qaadri): Seven minutes.

Ms. Lisa M. Thompson: Okay. I am going to change gears here a little bit. As you know, there is an ongoing OPP investigation happening right now. I'm wondering if you have had any conversations with the OPP officers who are investigating the government and removing hard drives from government facilities.

Mr. Chuck Rothman: No, I haven't.

Ms. Lisa M. Thompson: Okay. Were you ever part of an OPP investigation where officers thought to obtain deleted data from electronic sources? Have you ever been part of an investigation whereby the OPP involved you in recovering deleted information?

Mr. Chuck Rothman: No, I haven't.

Ms. Lisa M. Thompson: Okay. The OPP has removed a number of backup data hard drives, as you know, from various government storage facilities. I'm wondering, has the removal of hard drives from the government's backup facilities meant that the government's response to demands made by the justice committee will be tough to fulfill, and that they have to do it themselves?

Mr. Chuck Rothman: I'm not sure I understand—

Ms. Lisa M. Thompson: Do you think the OPP are doing the investigation themselves because they feel that MGS is not capable of doing it for the justice committee?

Mr. Chuck Rothman: I have absolutely no idea—I don't know any of the details at all. I don't even know what hard drives they've taken. I couldn't make any comment on that.

Ms. Lisa M. Thompson: All right. My last question for you right now: Could you share with us what you anticipate the OPP might find in terms of the kinds of information that could be present on the tapes they have confiscated?

Mr. Chuck Rothman: I have no idea what they've confiscated. I don't know what information would be on it, so I couldn't comment on what they might find.

Ms. Lisa M. Thompson: Okay. That's fine. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Thompson. To the NDP side.

Mr. Peter Tabuns: Mr. Rothman, I wanted to thank you for the information and perspective you gave us the last time you were here. You were very thorough. Neither I nor my colleague has any questions of you.

The Chair (Mr. Shafiq Qaadri): Thank you. The NDP cedes its time?

Mr. Jagmeet Singh: Yes, thank you.

The Chair (Mr. Shafiq Qaadri): Even you, Mr. Singh?

Mr. Jagmeet Singh: I do, indeed. Thank you.

The Chair (Mr. Shafiq Qaadri): Oh, my goodness. All right. Thank you. I will pass it now to the government side. Mr. Delaney.

Mr. Bob Delaney: Thank you, Chair. We, too, hope to make a virtue of brevity.

Welcome back, Mr. Rothman. It's good to see you again. The last time you appeared, you told the committee, just to recap, that you're not a lawyer, correct?

Mr. Chuck Rothman: Correct.

Mr. Bob Delaney: But you are a forensic engineer, and for the past 15 years, your focus has been on computer forensics and electronic discovery, correct?

Mr. Chuck Rothman: That's correct.

Mr. Bob Delaney: Is your primary role to advise lawyers and their clients on the technical aspects of digital information recovery?

Mr. Chuck Rothman: Yes, it is.

Mr. Bob Delaney: Did you assist the Information and Privacy Commissioner at all?

Mr. Chuck Rothman: Yes, I did.

Mr. Bob Delaney: Did you provide her with any advice on what other questions to ask?

Mr. Chuck Rothman: Yes, I did.

Mr. Bob Delaney: Were you ever given any direction by staff from the Ministry of Government Services with respect to that task?

Mr. Chuck Rothman: No, I wasn't.

Mr. Bob Delaney: The last time you appeared, you said that you didn't have any knowledge of the type of backup tapes that the Ministry of Government Services uses, that these backup tapes generally are essentially large versions of cassette tapes and that the archiving systems can be configured in a variety of ways within a number of days, but that you didn't have any direct knowledge of how that particular server or servers or tape backup facility were configured. Is that still true?

Mr. Chuck Rothman: Well, I do have some additional information on how the archiving system is configured, just by reading the transcripts from last week. There was some information in there that described it. But apart from that, I have no additional information.

Mr. Bob Delaney: Okay. Yes, I should perhaps have phrased the question, "direct information."

Mr. Chuck Rothman: No, no direct information.

Mr. Bob Delaney: All right. Last week, the former deputy minister, Kevin Costante, and the acting deputy minister, David Nicholl, testified that the retrieval of information from backup tapes is very infrequent and was only done about 12 times last year. Mr. Costante and Mr. Nicholl said that backup tapes are retained for disaster recovery purposes and, as you mentioned earlier, they're not a complete archive of records created, sent or received by an individual. That pretty much is in keeping with the testimony you just gave, I understand.

Mr. Chuck Rothman: Generally, that's the case. It's very rare that an organization would use backup tapes to store all of their information for retention purposes.

Mr. Bob Delaney: Right. Are backup tapes normally considered a part of the record-keeping environment?

Mr. Chuck Rothman: Sometimes.

Mr. Bob Delaney: Okay. Is there anything else that you wanted to add to that today?

Mr. Chuck Rothman: No.

Mr. Bob Delaney: Your firm has been involved in assisting the Ministry of Government Services in responding to a motion from the committee. Could you explain what role your firm is playing?

Mr. Chuck Rothman: I'm not sure if it's the Ministry of Government Services. I'm not directly involved in that—it's other people in my firm—but I do know that we are working for a couple of the ministries in responding to requests.

Mr. Bob Delaney: Has your review also included working with any political staff in the minister's office or the Premier's office?

Mr. Chuck Rothman: Not to my knowledge, no.

Mr. Bob Delaney: Okay.

Chair, I have no further questions at this time.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Back to the PC side: 10 minutes, Ms. Thompson.

Ms. Lisa M. Thompson: Thank you. Again, I want to go back to the OPP investigation. It's my understanding that the OPP have confiscated 12 tapes. I'm just wondering, based on your experience, would you anticipate that the government would still have access to the 12 tapes that the OPP has confiscated?

Mr. Chuck Rothman: Is it tapes or hard drives?

Ms. Lisa M. Thompson: Hard drives. Pardon me.

Mr. Chuck Rothman: Are you asking me—the OPP has confiscated those hard drives. Would the government still have access to them?

Ms. Lisa M. Thompson: Yes.

Mr. Chuck Rothman: I don't know. It depends on if the OPP gives them access, I guess.

Ms. Lisa M. Thompson: All right, very good. Then you also mentioned, actually, in your comments, in terms of electronic discovery, that a number of tapes can be concurrently searched at one time. Based on your experience—we're talking about doing two to three tapes in tandem, if you will—how many could your company do at a time if you were contracted to retrieve data?

Mr. Chuck Rothman: Wortzmans doesn't do that work ourselves. We would hire a tape restoration vendor to do it.

Ms. Lisa M. Thompson: And the restoration vendor: How many, based on your experience, do you feel that they could do at a time?

Mr. Chuck Rothman: Probably two, three, maybe four. It depends on the equipment; it depends on the type of tape; it depends on the backup software. I can't say for certain, but it would probably be in the two-to-four range.

Ms. Lisa M. Thompson: Okay, very good. The third party vendors: Do they write their own software programs or do they buy it in?

Mr. Chuck Rothman: It depends. Again, it depends on the software, on the type of tape. They may use software they've written themselves or they may use commercially available software.

Ms. Lisa M. Thompson: Okay.

I'm good. Thanks.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Thompson. To the NDP side—

Mr. Peter Tabuns: No questions.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen. Back to the Liberal side: Mr. Delaney, final 10 minutes.

Mr. Bob Delaney: Thank you, Mr. Rothman. We have no further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and merci beaucoup pour votre présence and your testimony, Mr. Rothman. You are officially dismissed.

We'll adjourn, but go into a subcommittee meeting. I will likely leave you in the able hands of Mr. McNeely for that. Thank you.

The committee adjourned at 1524.

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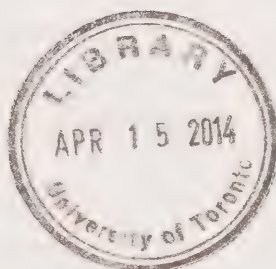
Mardi 1^{er} avril 2014

Standing Committee on Justice Policy

Members' privileges

Comité permanent de la justice

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 1 April 2014

Mardi 1^{er} avril 2014*The committee met at 0832 in room 151.*

MEMBERS' PRIVILEGES

The Vice-Chair (Mr. Phil McNeely): Good morning. I call the Standing Committee on Justice Policy to order.

Mr. Bob Delaney: Chair, before we get going, may I move a motion that we can perhaps discuss?

I move that this committee retain external legal counsel and that the external counsel be present during all hearings into the Speaker's finding of a prima facie case of privilege, with respect to the production of documents by the Minister of Energy and the Ontario Power Authority to the Standing Committee on Estimates and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants. Referred February 20, 2013—

The Vice-Chair (Mr. Phil McNeely): Mr. Delaney, we need that in writing.

Mr. Bob Delaney: —March 5, 2013.

I'll pass this to the Clerk.

Ms. Lisa MacLeod: Can we have a recess—

Interjections.

The Vice-Chair (Mr. Phil McNeely): And call a five-minute recess to copy it. Thank you.

Ms. Lisa MacLeod: Actually, could we have a 20-minute recess so that—

Interjection: Sure. A 20-minute recess.

Mr. Bob Delaney: This is not the recess for the vote, but absolutely—

Ms. Lisa MacLeod: I haven't seen it, so—

Mr. Bob Delaney: Yes, I know.

The Vice-Chair (Mr. Phil McNeely): Are you agreed with the recess?

Interjections: Yes.

The Vice-Chair (Mr. Phil McNeely): And I'll get equipment that I can hear here.

Mr. John Yakabuski: I just wonder why we couldn't have done this after the witness had—

Mr. Steven Del Duca: I think we've agreed to the recess.

Mr. Bob Delaney: We don't have to debate it [*inaudible*] we can do that after—

The Vice-Chair (Mr. Phil McNeely): I have equipment here that doesn't work. I had equipment that worked well yesterday; I'll have to get that. I understand

it's coming up, so I demand a recess until I can hear what's being said. Sorry about that.

Mr. John Yakabuski: Well, if you demand a recess, Chair, then we're going to acquiesce to your demand.

The committee recessed from 0833 until 0856.

The Vice-Chair (Mr. Phil McNeely): We'll get the meeting going again. I believe, Mr. Delaney, you're prepared to withdraw the motion and submit a revised motion.

Mr. Bob Delaney: Yes, Chair. I would like to withdraw the motion I tabled a short time ago. I believe the Clerk has passed out the one that I wish to substitute, which reads as follows: Pursuant to the subcommittee report dated March 5, 2013, I move that the Standing Committee on Justice Policy retain external legal counsel and that external legal counsel be present during committee meetings related to the orders of the House of February 20, 2013 and March 5, 2013.

I thank the Clerk's office for their assistance in the motion.

The Vice-Chair (Mr. Phil McNeely): Thank you, Mr. Delaney.

I think we'd like to move forward with the witness who has come here early this morning to be with us, so I would like to proceed with that.

Ms. Lisa MacLeod: Okay. I guess we'll defer this motion. But, Chair, we were wondering if the Clerk could come back to us, perhaps either this afternoon or Thursday morning, with the implications of this so that we can assess whether it's supportable.

Mr. Bob Delaney: That actually is a fair request, because when we moved that, none of the three of you were sitting on the committee at the time—you scooted out—because I wanted to run out and explain it to you.

Ms. Lisa MacLeod: Yes, sorry. We had a—

Mr. Bob Delaney: But that's a fair request.

The Vice-Chair (Mr. Phil McNeely): I will consult with the Clerk on that.

Mr. John Yakabuski: Well, we also want to decide how we're going to determine—

Mr. Bob Delaney: But that's part of the history in it, because prior to your coming on the committee, the committee went so far as to narrow it down to a short list of firms.

Mr. John Yakabuski: I was on the committee.

Mr. Bob Delaney: Were you on—okay. Basically, we're just sort of going back to that. Perhaps after we've heard from the witness, we'll discuss that. Okay?

The Vice-Chair (Mr. Phil McNeely): Let's hear from the Clerk on that. Is that possible?

The Clerk of the Committee (Ms. Tamara Poman-ski): If this motion were to pass, we can—and if you recall, we had a lot of discussions last year about this. I can bring an example of what the public accounts committee had done and the mandate of what their lawyer had done for the committee, and also come up with names in terms of a short list of who we would like to hear from or interview etc. I'm not sure. I'll find out the whole process. But again, if it passes, we can deal with all this in subcommittee—the logistics—and then bring it back to the full committee.

Mr. Bob Delaney: That's fair.

The Vice-Chair (Mr. Phil McNeely): Thank you, Clerk.

We want to welcome Michael Ivanco, president of the Society of Professional Engineers.

Mr. Jagmeet Singh: Point of order.

The Vice-Chair (Mr. Phil McNeely): Point of order?

Mr. Jagmeet Singh: Yes. Thank you. I'm just wondering if these questions can be raised and then perhaps report it back as soon as possible. We called Peter Faist last Thursday. We want an update of whether he's going to appear and when will he appear in committee, if you've called him and how many times, if you've emailed him and how many times there have been emails, and if there has been a letter sent to him and when that's been sent. If these attempts are not successful, we'd like to, at some point, raise the issue of calling for a Speaker's warrant for his attendance here.

Ms. Lisa MacLeod: On a point of order: We also agree. We are troubled, in the official opposition, that Mr. Faist has indicated he will not speak with the OPP. Given the revelations yesterday in question period, where he was under retention by the Liberals right up until Saturday, we would concur with our colleagues that if he declines his invitation to attend this committee, that a Speaker's warrant be created and issued.

The Vice-Chair (Mr. Phil McNeely): I think that those issues can be dealt with after we hear the witness and I get instructions from the Clerk on how that should happen.

Mr. John Yakabuski: Okay.

SOCIETY OF PROFESSIONAL ENGINEERS AND ASSOCIATES

The Vice-Chair (Mr. Phil McNeely): We welcome here Michael Ivanco—we've been a little bit tardy in getting to you—the president of the Society of Professional Engineers and Associates and our witness today. The Clerk will now swear you in or affirm you.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Dr. Michael Ivanco: I do.

The Vice-Chair (Mr. Phil McNeely): Thank you. You'll have a five-minute opening statement, if you wish. Then the Liberals will have 20 minutes of questioning, followed by the official opposition, then the NDP and then another 10-minute round if required. So just state your name for the purpose of Hansard and you may start your statement.

Dr. Michael Ivanco: Sure. My name is Michael Ivanco. I'm here today representing the Society of Professional Engineers and Associates, SPEA. SPEA is a union. We represent engineers, scientists, and technicians and technologists who work for Candu Energy Inc., which is formerly the reactor division of Atomic Energy of Canada, which was privatized in October 2011.

Our members design Candu reactors and we play a key role in their construction, inspection, maintenance and refurbishment. Our members have worked on the refurbishment of six Candu reactors, leading some of those projects, and are currently working on a seventh project in Argentina. We hope also to play important roles in the Darlington and Bruce refurbishments. Indeed, it's hard to imagine those projects being successful if our members do not play important roles, given their capability and experience.

A bit of history: The Candu reactor was originally designed in the 1960s by General Electric Canada, Ontario Hydro and Atomic Energy of Canada. The design teams of Canadian General Electric and Ontario Hydro were disbanded many years ago, leaving AECL, now Candu Energy, as the only remaining original equipment manufacturer, or OEM. The intellectual property associated with the reactor design is mostly contained within our membership.

Candu reactors provide over half of Ontario's electricity, with no greenhouse gas emissions, at an average price of approximately six cents a kilowatt hour. Once the reactors are built or refurbished, the incremental cost of operating them is negligible, ensuring that costs of nuclear power are stable over the long term. This is a characteristic that nuclear power shares with hydroelectric generation, and together the two account for almost 80% of Ontario's generation, at a low cost with no greenhouse gas emissions.

Currently, nuclear power provides Ontario's baseload generation 24/7. Baseload, for those who don't know, is the electricity load requirement below which Ontario's needs never fall. Baseload is at its minimum in the spring and fall, typically about 11,000 megawatts, and at its highest in the summer and winter at typically 13,000 megawatts. For this reason, Ontario's nuclear reactors schedule their maintenance outages in spring and fall.

Most of Ontario's hydroelectric generation does not operate 24/7, with the exception of stations such as those at Niagara Falls and Saunders, on the St. Lawrence. Most of the remaining ones store water behind their dams in the middle of the night and then release the water during the day, when the commercial and industrial demands for electricity are the greatest.

Historically, the balance of electricity generation was provided by coal. While coal generation is a heavy

emitter of pollutants and carbon dioxide, it is very flexible and can be used to supplement hydro in matching demand for electricity with supply. As Ontario has reduced, and now eliminated, coal-fired generation, natural gas generators, which share some of the same characteristics with coal, have stepped into that breach. As wind and solar generation, which are by nature intermittent, become more important parts of the electricity mix, natural gas is also important for making up gaps in their generation when the wind doesn't blow or the sun doesn't shine.

The price of electricity from natural gas is highly dependent on the cost of the fuel. This winter has been a good example as natural gas prices have spiked. Although the plants are cheap to build, the incremental cost of running them is relatively high and very dependent on the price of the fuel. To give you an example, if the price of natural gas doubles, the cost of electricity from those generators goes up about 70%. By contrast, if the price of uranium doubles, the price of nuclear-powered electricity goes up about 5%. This is the reason Ontario has been reluctant to use natural gas for baseload generation and, we think, rightly so.

However, no single form of generation can provide for all of Ontario's needs. The electricity demand in the middle of the day can be twice as high as the baseload demand, and this requires several different technologies in order to maintain a robust and flexible system.

Our position is that natural gas is a valuable and finite natural resource that should not be wasted. It is used in the production of plastics, fertilizer, hydrogen and important organic chemicals, as well as home heating, and once it's used it's gone forever. Unfortunately, the most wasteful use of natural gas is for the generation of electricity. Having said that, since the coal plants have been shut down, we do need to burn some natural gas to maintain a stable electricity generating system. But care should be taken that its use be minimized. The plants in Oakville and Mississauga, which were cancelled, were not needed, in our opinion, in particular once the refurbished Bruce A units came online.

However, when the Pickering units are taken off-line at the end of this decade, 3,000 megawatts of baseload generation will disappear and that situation will change. Those 3,000 megawatts of nuclear power, which work 24/7, cannot be replaced by intermittent wind and solar, because they have low capacity factors—approximately 25%. The reality is that, because there will not be any new reactors built at Darlington, the 3,000 megawatts of nuclear power will likely be replaced by a mixture of approximately 75% natural gas and 25% wind and solar. This is a relatively high-cost combination that will also have high price volatility and will increase Ontario's greenhouse gas emissions by about 10 million tonnes, equivalent to the tailpipe emissions of two million new cars. In our opinion, this is not the direction that Ontario should be heading, and we certainly did not oppose the shutting down of the Oakville and Mississauga plants.

That's my statement.

The Vice-Chair (Mr. Phil McNeely): Thank you. We'll go to the Liberals for the first question. Mr. Del Duca.

Mr. Steven Del Duca: Thank you for being with us this morning, Dr. Ivanko, and for your patience. I want to begin by talking a little bit about you and learning a little bit more about your own personal background or experience. Thank you very much for providing us, in your opening remarks, with a fairly detailed sense of the history of what's been happening in the energy system.

As I think you would probably know, part of the mandate for this committee is to provide recommendations regarding how we can improve the siting process for large-scale energy projects. You obviously have been asked here today because you are a technical expert with many years of experience in the energy sector. I'm wondering if you can start by telling us a little bit more about you specifically and your history and expertise.

Dr. Michael Ivanko: Okay. I sent a brief bio to Tamara last week. I'll just give a little bit of background. I got my PhD in 1985 from the University of Toronto, and my background is in physical chemistry, which is kind of a mixture of physics and chemistry. I ended up working at Atomic Energy of Canada in the laser isotope separation group for about seven or eight years. Then, basically, since about 1993, I've worked on product development in various different areas.

My involvement in the energy field started, really, about eight or nine years ago through an interaction with the Society of Energy Professionals, helping them put together an energy plan for the future. That brought me into contact with the people I know from the IESO and various others. I had to do a lot of reading, study—those kinds of things—in electricity generation in general and in Ontario in particular. Through various interactions with colleagues in the academic sector, I ended up teaching a third-year engineering course in terrestrial energy systems at U of T.

I've basically worked in this sector since 1985, primarily in nuclear, but I have also done work outside of nuclear.

Mr. Steven Del Duca: Thank you very much for that. As somebody who has a significant amount of experience in the energy sector, I think you would also—certainly you referenced this both in your opening and in the response to the first question—have fairly substantial knowledge of the energy issues that the system faces here in the province of Ontario. Can you explain to us, from your perspective, how the current system would compare to the system that Ontario had in the past?

Dr. Michael Ivanko: Well, the system in the past was fairly straightforward. It was centralized generation with relatively large stations built in different places, with the exception of hydro stations, which were scattered all over the place in various rivers.

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But there were large, centralized locations for stations like Niagara Falls, Saunders in the St. Lawrence for hydroelectric, the nuclear plants at Bruce, Pickering and

Darlington, and then the coal plants, which are in different places—Lakeview, Nanticoke, Atikokan. Those are the largest plants, so you've got transmission lines connecting these things. Nuclear provided the baseload, 24/7, which is the electricity used at 3 in the morning, and the balance, to match load with supply, which varies quite a lot in Ontario from nighttime to the day, was met by coal and hydroelectric. Now it has become substantially different because the coal stations are gone, so gas has stepped in to fill that breach, together with wind and solar.

In the past, wind and solar haven't played a very large role, but they're playing an increasing role. I think that last year wind generated about 3% to 4% of the electricity. The way in which wind and solar were used was different last year than it is now. It used to be, with the FIT program, that if the wind blew and it generated electricity, you had to take it, and anything else had to shut down. My understanding is that since September that has been changed, so there is the option now of asking wind generators not to produce power and paying them not to produce power, though I think what has happened in practice is that now when there is a surplus of electricity in the middle of the night, which sometimes happens in the spring and fall, the Bruce generators are generally asked to blow off steam and not produce power and are paid not to produce power. To me, that's one of the biggest differences; there are a lot of people being paid not to produce power at certain times of the day.

Mr. Steven Del Duca: You mentioned coal. How reliant on coal was Ontario prior to the changes that have been made in the system over the last little while?

Dr. Michael Ivanco: It depended. It varied from about 20% to 25%, typically, of Ontario's electricity. Certainly, shutting them down has reduced the carbon dioxide emissions a lot and the pollution as well.

Mr. Steven Del Duca: Bruce Campbell from the IESO testified before this committee last August, and when he was asked about the changes to the energy system over the past few years, he talked about the effect that phasing out coal, as we've discussed, has had on the system. He explained, as you mentioned a second ago, that coal is being replaced by investments in natural gas, wind and solar, and of course a continued reliance on nuclear energy for our baseload supply.

Mr. Campbell said: "What we've been doing is putting in place the tools and learning to operate a very differently configured system, one that we can operate just as reliably but one that is very differently configured from what had been the practice for many years—and very low-carbon." That's what he said when he was at the committee here.

You've alluded to this in both your opening and some of the responses. I'm wondering if your organization has a position regarding the types of generation that Ontario invests in and the makeup of Ontario's energy supply.

Dr. Michael Ivanco: Our position is that in the current energy mix, certainly the reliance on nuclear power for baseload is sensible. The incremental electricity that

is used to match demand with supply, ideally, would be hydroelectricity, but we recognize that there's not enough hydroelectricity around. That being the case, and if our desire is to reduce greenhouse gas emissions as much as possible, the balance should be made up, as much as possible, with clean sources like wind and solar, and when you have to, to fill the gaps, with gas, because there's nothing else left.

Mr. Steven Del Duca: You mentioned this a little bit earlier, so I guess the answer is yes, but I'm going to ask it anyway to make sure that we're clear about this: Were you aware of the cancellation of the Oakville and Mississauga power plants?

Dr. Michael Ivanco: I read about it in the paper.

Mr. Steven Del Duca: Have you followed the work of this particular committee at all?

Dr. Michael Ivanco: No.

Mr. Steven Del Duca: Are you familiar with the current siting process that exists through the Ontario Power Authority?

Dr. Michael Ivanco: I have a little bit of familiarity with it through the consultation process that went on in the summer that the OPA had in various communities. In Toronto they had a couple of smaller sessions for stakeholders, and I remember sitting in on a table where they talked about siting—they were looking for input from people in siting plants, and I think my contribution was that they should probably talk to the local communities before they site them.

Mr. Steven Del Duca: I was going to ask whether or not you personally had the opportunity to provide your input into the process, whether through the OPA or the IESO or the government, but you've kind of answered that.

Dr. Michael Ivanco: More recently, through the process; yes, last summer—the summer of 2013.

Mr. Steven Del Duca: As I mentioned earlier, part of the work here at the committee is to develop recommendations regarding improving the process and improving how we site energy infrastructure. We've had over 50 witnesses come before the committee, many of whom have provided valuable feedback and advice on the siting process.

You mentioned communities a second ago. The main feedback that we've heard from members of both the Mississauga and the Oakville communities is that there should have been a better consultation process with local residents right from the very beginning of the siting process. So, based on your experience, what role can engaging with local communities play to better support the energy infrastructure siting process, and do you have any recommendations regarding the most effective ways that government and other agencies might seek to use to consult with those communities?

Dr. Michael Ivanco: It's kind of outside of my specific area of expertise, but as a citizen I would have preferred the government to have come perhaps to town council, perhaps have had public meetings to explain what they want to do and to gauge the sense of public

acceptance, what people's concerns were; those kinds of things. Those things were not really done in Oakville. It was kind of done post facto.

Mr. Steven Del Duca: Okay. Thank you for that.

Last August this committee also had the opportunity to hear from a Dr. Alan Levy, and when he was asked about how to best engage the public, he recommended that energy need and supply should actually be taught at an early age and included in the curriculum. He stated, "It should start at the schools. It's as important as clean water. It's one of the most important things in any civilized society."

Mr. John Yakabuski: Point of order, Chair.

The Vice-Chair (Mr. Phil McNeely): Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Chair. With respect to the members of the government, but being respectful of the witness, they're asking him questions that clearly are not in his field of expertise. I think we should be asking the witness questions that he is prepared to answer. He did not come here to answer questions about what you want to hear about some other witness—

The Vice-Chair (Mr. Phil McNeely): Thank you, Mr. Yakabuski. You've said enough to know what you're trying to—

Mr. John Yakabuski: He has already said it's not his field of expertise.

The Vice-Chair (Mr. Phil McNeely): I think Mr. Del Duca is in order here. Just continue the questioning.

Mr. Steven Del Duca: Thanks very much. Just in the interests of making sure you hear the whole question again, I'm going to start from the beginning.

The committee had the pleasure of hearing from Dr. Alan Levy last August. When he was asked about how to best engage the public, he recommended that energy need and supply should actually be taught at an early age and included in the curriculum. He stated, "It should start at the schools. It's as important as clean water. It's one of the most important things in any civilized society."

"I think if you raise the importance of reliable, inexpensive supply to where it should be in any society, then there will be less rhetoric about electricity prices and so forth and a realization that it's a necessity. We have to value it carefully. We have to plan for it carefully."

I'm just wondering: With your expertise in history and the energy sector, what do you think of that particular recommendation, and do you think there is any value in educating future generations early so that communities gain a better understanding of their energy needs and how those needs might be met?

Dr. Michael Ivanco: Well, of course it is. My experience with students—and I've spoken to students in elementary school and high school—is that they aren't taught a lot in elementary school and high school. They certainly start to teach this in grade 10. For what it's worth, some of the sharpest technical audiences I've ever spoken in front of have been grade 10 students in Ontario. They still remember all the science they were taught up until grade 10.

Mr. Steven Del Duca: You said a second ago you've had the chance to speak to students in a school setting?

Dr. Michael Ivanco: Yes.

Mr. Steven Del Duca: And how was the information flow received? Were they receptive? Were they interested?

Dr. Michael Ivanco: The most recent time was North York collegiate—I think it was North York collegiate. It was science and environment day or something like this. Jack Gibbons was invited from the Ontario Clean Air Alliance, and me. We had an open debate on electricity generation in Ontario in the future and so on. I think it was a great venue. The students were really engaged and very knowledgeable. I was pleasantly surprised.

Mr. Steven Del Duca: You said that was grade 10? The students were—

Dr. Michael Ivanco: Yes.

Mr. Steven Del Duca: Do you think it makes sense to start even—I have a six-year-old and a three-year-old daughter, but starting even earlier might make more sense in terms of the fundamentals around encouraging learning about future energy supply needs?

Dr. Michael Ivanco: Again, it's not my area of expertise, but I have had children in school. Typically, they start engaging science fairs around grade 6 or so. That would be my suggestion, for what it's worth as a layperson in that area.

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Mr. Steven Del Duca: I appreciate that—as a layperson who understands the energy system quite well and has a significant amount of history in the system. So I appreciate that opinion.

Still keeping in the vein of the notion of how we site and some of that stuff, I wanted to ask you a couple of questions.

In an effort to improve our integration, in May the Ministry of Energy announced changes to the renewable energy program intended to address municipal concerns, specifically, and give communities more control and input in siting energy infrastructure, and focus on communities that have prior support for those kinds of projects. The changes will, among other things, require developers to work directly with municipalities to identify appropriate locations and site requirements for any future large renewable energy projects. The province will move to a procurement model for these large projects. As mentioned, over the summer the province has been consulting extensively to formulate this process.

Do you think it's a positive step forward in terms of giving municipalities more control over these kinds of decisions?

Dr. Michael Ivanco: Again, it's not my area of expertise. What I can say is that that is what they do in nuclear communities. It's the only form of generation where there isn't NIMBYism. It's kind of the opposite of NIMBYism.

Mr. Steven Del Duca: With respect to nuclear projects?

Dr. Michael Ivanco: Yes.

Mr. Steven Del Duca: Can you explain a little more about that for the committee?

Dr. Michael Ivanko: Sure. The communities near Kincardine, and also near Darlington, when there was going to be a new build—I think the OPA or the government announced, probably six years ago, that it had planned to build reactors at Darlington—there was a big community competition to get people to sign petitions saying, “Build it Here.” So that was one good way to get community acceptance, but that’s a little bit different; those communities are already predisposed to wanting more reactors because they’ve seen what it has done for the local communities.

With respect to other projects, I was on the Oakville committee that fought against the gas plant, and you will have issues of nobody wanting something in their backyard, so that is a problem. But certainly engaging the community has got to help. It’s better than having something foisted on them.

Mr. Steven Del Duca: The government also recently announced that small and medium-sized municipalities will be eligible for funding for municipal energy plans which align infrastructure, energy and land use planning. These plans will focus on increasing conservation and helping to identify the best energy infrastructure options for a community.

Do you think that this process, this idea, this mechanism, will have a tangible benefit for communities that receive the funding?

Dr. Michael Ivanko: I’m not really qualified to speak to that.

Mr. Steven Del Duca: Okay. A second ago, you talked about some of the processes that were used in terms of the communities like Kincardine and one other location. I’m sorry. I didn’t—

Dr. Michael Ivanko: Darlington—Clarington.

Mr. Steven Del Duca: So what years would that have been? I’m just curious.

Dr. Michael Ivanko: We’re talking about five, six years ago. When it looked like there was going to be a new build at either Darlington or Bruce and it was still up in the air as to where it would be, there was a competition amongst those communities to try and convince government to build the new reactor, wherever it was built, in their own community.

Mr. Steven Del Duca: Thanks for that.

At the beginning, in your opening remarks, you talked a little bit about the work of the Society of Professional Engineers and Associates. I’m wondering if you can elaborate, tell us a little bit more about the specific work of the society within the sector.

Dr. Michael Ivanko: We have worked with other unions in the energy sector, the Society of Energy Professionals being one. We were at one time members of that group, and they put out an energy plan in 2005 that we contributed to.

For example, whenever there are environmental hearings for nuclear projects, we always make contributions to those things. We attend; we give presentations and make submissions.

We provided input into the LTEP, certainly this past time, and I think three years ago as well. I’m not 100% certain about three years ago, but it’s normally something we would do.

We go to stakeholders’ meetings, we go to energy conferences—all of these things that are held in Ontario. Two weeks ago, there was one at the Mowat Centre at the University of Toronto, which has a think tank on energy. So we attend all of these things and we contribute. We make written submissions, we occasionally have op-eds in papers and letters to editors, those kinds of things.

Mr. Steven Del Duca: How many members are there?

Dr. Michael Ivanko: Right now, about 800. We’ve had as many as 1,200.

Mr. Steven Del Duca: And that’s province-wide?

Dr. Michael Ivanko: Yes. Mostly in Mississauga, although we do have some outside of province, but not that many.

Mr. Steven Del Duca: Mississauga is a great part of the province.

You mentioned a second ago about providing some input with respect to the long-term energy plan. Can you elaborate a little bit about some of the information or suggestions that the society provided during that most recent process?

Dr. Michael Ivanko: We gave a written submission—I’m trying to remember the details of it. The details were similar to what I made in my opening statement, which was that Ontario should continue to rely on nuclear for baseload. The key part of it was that the 3,000 megawatts that will be lost at Pickering, when Pickering shuts down, should be replaced at least partly with new nuclear build. We had opinions about gas, which were similar to the ones that I shared. We recognize it’s necessary, but it should be used sparingly.

We do support clean alternative sources such as wind and solar but in the right abundance, which is probably not a really heavy reliance, but certainly a supplemental reliance. Having a multitude of sources, and not all your eggs in one basket, is generally good for stability, as long as everything is wired together correctly. So far, I think things are reasonably good. One of the measures of reliability is blackouts. We haven’t had a major blackout since 2005.

Mr. Steven Del Duca: Why do you think that’s the case, since 2005? I mean, that’s a long stretch now prior to what existed in Ontario, when we had brownouts and—

Dr. Michael Ivanko: Well, it suggests that the grid is no less reliable than it was then, and 2005 was also a bit of a fluke.

Mr. Steven Del Duca: No less reliable or more reliable?

Dr. Michael Ivanko: No, it’s no less reliable than it was.

The Vice-Chair (Mr. Phil McNeely): One minute.

Mr. Steven Del Duca: One minute, Chair? Thank you.

Do you feel your opportunity to provide input for the long-term energy plan in the recent process—do you feel comfortable with the opportunity you had in the consultations that were done around that process?

Dr. Michael Ivanco: Yes. Actually, this time around, I thought the process was done better than in the past. In the past they had these large town hall meetings where everyone who had an opinion would come and stand at a microphone and voice that opinion. There was cheering, booing; it was kind of like almost a circus atmosphere. This time around, it was more civilized. It reminded me of people presenting papers at scientific conferences, at poster sessions, you know, where there would be different booths set up and you could come and have more quiet conversations in smaller groups with people who were experts from the OPA. I liked the way it was set up a lot better this time.

Mr. Steven Del Duca: And do you think other participants in that consultation process felt similarly, felt that it was an improvement from what you might have heard anecdotally?

Dr. Michael Ivanco: I haven't talked to them about what they thought about it.

The Vice-Chair (Mr. Phil McNeely): Thank you. Your time is up.

I'll go to Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Dr. Ivanco, for joining us this morning. Henceforth, may I call you Michael?

Dr. Michael Ivanco: Sure.

Mr. John Yakabuski: We've known each other for a long time. You've been extremely helpful to me over many years, assisting me in understanding our electricity system at a much deeper level than I would have otherwise. I appreciate the work I was able to do with you and your colleagues over the years.

Dr. Michael Ivanco: Thanks.

Mr. John Yakabuski: You've made some comments, in the questions, to Mr. Del Duca from the government side. But first, I'm just going to get rid of some housecleaning stuff. Were you involved in any activity with regard to the cancellation and relocation of the Oakville and Mississauga natural gas plants?

Dr. Michael Ivanco: My only involvement was to serve as a private citizen at the grassroots level in a committee in Oakville called C4CA, Citizens for Clean Air.

Mr. John Yakabuski: And we met on that as well. Now, did you have anything to do with the decision to cancel the gas plants? Were you involved with the Premier's office, the Ministry of Energy or any of their staff in making the decision—or the Liberal campaign team?

Dr. Michael Ivanco: No, of course not.

Mr. John Yakabuski: Nothing to do with that decision? So you're not involved in any of the discussions that brought about the \$1.1-billion cancellation?

Dr. Michael Ivanco: No.

Mr. John Yakabuski: None whatsoever, other than acting as a private citizen in your capacity as a resident of the area.

Now I'm going to ask you more about general policy, because Mr. Del Duca seemed to be trying to take you down that road. I'm not sure he was happy with some of your answers, but what I've always understood about your answers and what I've always appreciated is that you give straight, clear and honest answers.

He talked about the transformation of our electricity system—or asked you. What I got out of it was that we have no less reliable a system, but we have, because of the choices that were made—as you say, if uranium goes up X per cent, the price of power does not change that much. If the price of other fuels—clearly the decision to massively increase the amount of natural gas in this province was as a result of the decision to shut down coal, knowing full well at the time that their original guarantee was, “We're going to replace coal with this wonderful new technology, this inexpensive technology: wind.” We all knew that was quite impossible; in fact, it was false from the beginning.

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Would you agree, as you said earlier, that we have today, as a result of the decisions that were made, a much more expensive system?

Dr. Michael Ivanco: The system is very similar to what it was. Before the wind generators started coming online, 100% of the electricity was made with nuclear, hydroelectric and coal, and now 80% of the electricity is still made with nuclear and hydro, and the other 20%, instead of being coal, is mostly natural gas with a little bit of wind and solar. The little bit of wind and solar is more expensive, to be sure, but it's not yet a significant enough piece of the electricity mix to have a huge impact, I would think, on price. As it grows, it will have a bigger impact.

Right now, wind and solar generate 4% of the electricity roughly. Even if they were twice as expensive, that would only increase the price of electricity a few per cent. It's if they start growing to levels of 10% to 15%, then you may have problems in that.

Mr. John Yakabuski: The price of the electricity is one part of it. Correct? Because the cost of building that transmission to accommodate that capacity; whether it's generating or not—the wires have to be built, and the transmission lines have to be built.

Now, the current plan under this government is for 10,700 megawatts of renewable power, 90% of which will be wind. What is your view with regard to what's going to happen to the cost of electricity if that is carried through to fruition, the effect it will have on the build, taking into consideration the cost of transmission, the cost of building the infrastructure, the building of the turbines themselves, and whatever generation is produced from them? What do you think the net effect of that is going to be on our electricity bill?

Dr. Michael Ivanco: The more wind and solar you integrate into the system, unless the prices come down substantially, is going to drive the price up. You do have to build some extra transmission—we all know transmission costs money—and you have to have the backup

generation too, which you have not mentioned, which is natural gas, which costs some money.

But the 10,700 megawatts of wind that they're talking about adding, in reality, because the capacity factor is about 25%, it may mean 2,000 to 3,000 megawatts average supply. To me, the bigger worry is, what do you do on the really good days when it is making maybe 8,000 or 9,000 megawatts of electricity? What do you have to shut down?

To me, the main objective of moving to these areas was to decarbonize the system, and by shutting down the coal plants, the system has been heavily decarbonized. I remember 10 years ago the greenhouse gas footprint was around 300 grams a kilowatt hour; now it's about 80. There's not a lot more to be gained. The only way to decarbonize the system now is to turn off the natural gas plants, and you can't do that.

Mr. John Yakabuski: We cannot turn off the natural gas plants because they must be there to back up the wind when it's not blowing.

Dr. Michael Ivanco: And for peaking.

Mr. John Yakabuski: Right, for peaking purposes, but they also have to be there—if you've got that high capacity of wind in the system and all of a sudden a new weather front blows through and there's no wind, then you've got to fire up the carbonized natural gas in order to fill the void on a very quick basis, because presumably our nuclear plants will be running at capacity, as they usually do.

I checked the numbers. I haven't checked them since Saturday, but I checked the numbers on Saturday morning, and we were getting about 70% of our electricity—68 point some per cent of our electricity was coming from nuclear this past Saturday morning, which speaks to the importance of it in our system; does it not?

Dr. Michael Ivanco: Yes, of course. We don't have a problem with the notion of replacing coal plants with a mixture of gas and wind and solar. Our only concern is, once it starts creeping into replacing hydro and nuclear as well, then you're just replacing something that's clean with something that maybe is not quite as clean, or close to as clean, and generally more expensive. That was our concern and the gist of our submissions to the OPA: that yes, you need a lot of different sources, and you want to replace coal with gas and wind and solar. That's good, too, but you don't want to start spilling water or asking Bruce to blow off steam to match the supply with demand.

Mr. John Yakabuski: Which we've been doing quite a lot over the last few years: spilling water and asking Bruce to blow off steam, which, quite frankly, causes us to blow off steam at times too, because we know that that's just money being thrown down the tubes.

I want to talk about the change in plans on the part of the government. We always supported them when they talked about new-build nuclear, and we're supportive of the refurbishment with respect to nuclear as well. But am I not correct—and please feel free to correct me—in saying that refurbishment is only one part of the equation? Because once that refurbishment is done, and

once that refurbishment runs its natural course, which it does, there will be a point at which all of whichever nuclear plants are being refurbished or will be refurbished—they will also have an end of life.

If we don't have a new-build program in place, the question is, where is that power going to come from when all of the plants have been refurbished? Some of them are not being refurbished because of various reasons: cost and capacity—they're smaller capacity plants, and it probably doesn't have as good a return on investment. But if they're all refurbished and they're all worn out—which will happen at some point—where are we supposed to get the 70% of the power? We don't have the capacity in water in this province because of the nature of our system. Where are we supposed to get that 70%? And if it's coming from the sources that this government seems to be in love with, what is the cost going to end up being?

Dr. Michael Ivanco: I wish I had a crystal ball. I mean, the refurbishments will extend the life of the existing plants out into 2045 for some of them. It's a long way away, and—

Mr. John Yakabuski: I might even still be alive at that point, and I want to know where the power is coming from in my old-age home.

Dr. Michael Ivanco: It's hard to say what's going to happen in 30 years. There are all kinds of different designs out there. Our biggest concern is that we would like—if the reactors are replaced, ideally they'd be replaced with something that's designed and built in Canada. You have to build reactors every once in a while or you lose the expertise and ability, and if we're not going to build them in Ontario, which we had hoped to build them in Ontario, then we have to start building them again offshore. We have high hopes for projects offshore, but that's the only way to keep our expertise current and maintain the ability to design and build reactors in Ontario.

Mr. John Yakabuski: I'm going to go back to you, Michael, maybe in a more direct way. If we don't have nuclear power by 2045—we'll use that date for the purposes of this discussion—and presumably, regardless of what the situation is today, with all the malaise in the manufacturing sector, and much of it could be connected to the power procurement decisions of this government. But if we don't have a nuclear system in 2045, we are going to be up the creek without a paddle, are we not?

Dr. Michael Ivanco: If all you have is current technologies and you don't have nuclear power, then it's obvious what you have to use: You have to use coal or gas. That's what they use in Asia, where they need tonnes of electricity.

Mr. John Yakabuski: Well, the Chinese could probably come in and build us plants. They're certainly building plenty of them now.

Dr. Michael Ivanco: They may be building Candu plants, for all we know, in 10 years.

Given existing technologies, if we're not going to build new nuclear plants in 30 years, at some point soon there needs to be a major investment in infrastructure for

things like energy storage. This is what I keep trying to explain to people. I have a friend who's an aeronautical engineer, who told me, "You can make a brick fly, but it doesn't make sense because a brick's not very aerodynamic." Engineers can design a system to make anything work. Engineers can design a system to make Ontario run on wind and solar and energy storage, but it'll cost an incredible amount of money. Affordability is a factor. The technology exists to replace nuclear power with a mixture of wind and solar and energy storage, but it would cost 10 times as much. Affordability is an issue. With current technologies, if you're not going to use nuclear, you're going to use gas or coal. In 30 years, who knows? Maybe something will come along by then; I don't know.

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Mr. John Yakabuski: I think you folks have done a much better job over the last number of years, but why is it that we still allow the opponents of nuclear to make the cost argument their biggest reason for being opposed to the procurement of new nuclear builds and/or refurbishment, when it is clear that the alternatives—particularly the renewables that the government, as I say, seems to be in love with—are far more expensive based on their capacity factors and their reliability factors? Why is it that they still seem to get away with that argument that it's going to be a less expensive system when people who understand know that it will be a more expensive system without nuclear?

Dr. Michael Ivanco: We try not to let them get away with it. The trouble is that nuclear reactors, for example, are big capital investment facilities—

Mr. John Yakabuski: Sure; understood. They're complicated units.

Dr. Michael Ivanco: It makes a great headline if you say that the reactors are going to cost \$15 billion, when really what's important is price per kilowatt hour. That's where we try to steer those discussions: the unit price.

Lately, when I've been hearing things like this when I go to these think tank meetings, I make the point that if you're going to use that argument and you didn't have the Adam Beck stations at Niagara Falls, then you would never build them today. But if you look at the cheapest source of electricity in Ontario, it's from the Adam Beck stations in Niagara Falls, because generations of politicians previously, in the 1920s, had the foresight to make that capital investment.

You can't have it both ways. Sometimes capital investment makes sense; it's good public investment. The Adam Beck station is the perfect example to me. If it didn't exist today, it would cost \$20 billion to \$30 billion to build it, and everyone would throw up their hands and say, "That's too much money. It's too much risk." But thank goodness, politicians did it 90 years ago.

Mr. John Yakabuski: For the megawatts it produces.

Dr. Michael Ivanco: Yes. The price per kilowatt hour from Adam Beck is virtually nothing.

Mr. John Yakabuski: Yes: a couple of cents. Thank goodness for the people who were thinking that way back in the early 1900s.

I'm a little concerned about the way that people are thinking here in the early 2000s with respect to what it's going to do to power prices in Ontario, because this is still a province that produces things—a lot less than it used to. But the price of power is one of the most paramount concerns when people decide whether or not they're going to establish a business in the province of Ontario. It is affecting our ability to compete with other jurisdictions.

I know you've talked a little bit about the nuclear experience in Germany, for example. I've heard that Merkel got skittish on nuclear after the Japanese Fukushima issues. Now I understand that they're firing up coal plants that are old and inefficient and actually some of the heaviest polluters and buying nuclear power from France because their renewable power system is simply not efficient enough and doesn't perform well enough to satisfy their needs. Are you aware of that?

Dr. Michael Ivanco: All I know for certain is that Germany's greenhouse gas footprint has gone up in the last couple of years. Certainly in 2013 it was bigger than in 2012; in 2012, it was bigger than 2011.

Mr. John Yakabuski: Because, presumably, they've had to fire up more coal plants. The numbers do bear that out, which is—

Dr. Michael Ivanco: Coal and natural gas are both fossil fuels.

Mr. John Yakabuski: It's kind of ironic, eh? You build 30,000-plus megawatts of wind because you claim you want to have a cleaner environment, and then you end up with a dirtier environment because the wind is not working and you've got to fire up old coal plants—not even the new technology, but older coal plants that are producing greenhouse gases at levels that were unacceptable 20 years ago. Can you imagine how unacceptable they are today?

That's what happens, I think, when you make the wrong decisions. I'm concerned about the decisions that this government has made because, of course, it's so far down that wind road—not the winding road, but the wind-ing road, spelled the same way. They're so far down the wind-ing road that they won't admit to the mistakes they've made. They just want to compound their mistakes, and I'm afraid of where it's going to leave us in another 20 years or so. At the end of this year, their expectation is that they're going to have 4,000 megawatts of wind in the system, which is going to exacerbate our problems with being able to manage the system—turning units on, turning them off—because of the instability in the system. How can you base a system on something that you don't control? The one thing we had in our system was, we had total control over the power system we had, whereas now we're getting into a system that we lack control. Would you not agree with that?

Dr. Michael Ivanco: Wind has its good points and its bad points. Where we object to its use is if you're going to replace a clean source with a mixture of wind and fossil fuel. We object to that. Replacing a clean source with a source that's not as clean, to us, doesn't make as

much sense. I think if you're going to rely on wind heavily, you need a number of things. You need better weather predictability, and really, you need energy storage of some kind, but—

Mr. John Yakabuski: It's expensive.

Dr. Michael Ivanco: Well, electricity storage is not practical. Energy storage is more practical, but it usually requires a really large capital investment which, then, you have to factor into the price of electricity from wind.

The Vice-Chair (Mr. Phil McNeely): One more minute—one and a half.

Mr. John Yakabuski: Michael, thank you very much for your candid answers. I always appreciate the opportunity to converse with you. We appreciate you making the second effort to join us. We realize there were circumstances beyond your control last week. I apologize that the committee was unable to wait for you to arrive, but we're very pleased that you were able to join us this morning. Thank you very much.

Dr. Michael Ivanco: Nice of you to apologize, but that was all my fault.

The Vice-Chair (Mr. Phil McNeely): Now we'll go to the third party, Mr. Singh.

Mr. Jagmeet Singh: Thank you very much, sir. My colleagues from the Conservative Party covered some of my concerns, which were just to confirm that you didn't have any involvement expressly on the decision-making side with respect to any gas plant, whether in Oakville or in Mississauga; that you were involved instead as a citizen in your local community on a grassroots level in opposition to, specifically, the Oakville build. Is that correct?

Dr. Michael Ivanco: Just the Oakville build, yes.

Mr. Jagmeet Singh: I'll ask you just some brief questions about some energy policy and then let you be on your way. With respect to nuclear, in terms of cost, one of the factors that I want you to consider or perhaps give your brief opinion on—one example is in terms of what I've read in terms of refurbishing costs. The estimates that I understand for existing refurbishments range from \$8 billion up into the \$30-billion mark, and there's no clear or set number. Is that what you understand as well, that there's that broad of a range? Those are some of the numbers that I've seen in terms of the cost potential for the existing nuclear refurbishment projects that are proposed.

Dr. Michael Ivanco: My understanding is that the target is somewhere in the range of \$2,500 a kilowatt for refurbishment, \$2,500, maybe \$3,000, in that range. Those are kind of the numbers I've been hearing. As an investment in generation that's going to last maybe 25, 30 years, that's relatively economical. The cost of electricity—it's a little bit hidden, but to give you an idea, when the Bruce reactors were refurbished, I think the original estimate was \$2.8 billion. They went considerably over budget. I think it was \$4.8 billion, but they still sell electricity at the contracted price of 6.8 cents a kilowatt hour, and they still make money. So I think if you can actually refurbish reactors for around \$2,500, \$3,000 a kilowatt, it's probably good for everybody.

Mr. Jagmeet Singh: But my concern is the overage costs. The expectation is that the costs could be a certain amount, but the range is so vast. Are you familiar with that range? This is something I read in an article, that the potential cost can range from \$8 billion up to \$32 billion. That just seems to be astounding, to see that much of a spread, that there's not a clear ability to come down with a number, that it's that much of a range. It's, to me, very troubling as a policy-maker or lawmaker to move in a direction to support something that doesn't have a clear cost behind it, and it could have such a wide range.

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Dr. Michael Ivanco: I haven't seen the estimates of \$8 billion to \$32 billion. But just doing the arithmetic in my head, the two Bruce units that were refurbished—and keeping in mind that those projects started in about 2006—\$4.8 billion, and that was really hugely over budget for about 1,600 megawatts of generation. It still came out to about \$3,000 a megawatt. That was with a project that was quite a bit over budget, and it still makes money and produces electricity pretty cheaply.

Mr. Jagmeet Singh: I see. One of the other things, though, that is something that we need to consider is that while the production itself might be a good value, but the infrastructure costs, that's the burden that is placed on the taxpayer or on the citizens. That's quite a significant infrastructure cost. That has, obviously, spilled over to the populace.

Dr. Michael Ivanco: That gets back to my example of Adam Beck. Right? I mean, sometimes, I think, it's right to make public policy decisions that require large capital investments for the public good. The Adam Beck station is my latest example. You wouldn't build it today, people tell me, because the cost is too high and the risk of cost overrun is very high. The payback, in terms of return on investment, could be two decades, so no private sector company in the world would make that kind of investment. But public investments are made that way because you look at the greater good for people over a long period of time.

I see nuclear investments in very much the same way. Sometimes it's worth making large capital investments if the payoff is 20 or 30 years down the road.

Mr. Jagmeet Singh: Interesting. I have no further questions. Thank you.

Dr. Michael Ivanco: Thank you.

The Vice-Chair (Mr. Phil McNeely): We'll go to the government and Bob Delaney.

Mr. Steven Del Duca: No.

The Vice-Chair (Mr. Phil McNeely): Oh, Mr. Del Duca—

Mr. Steven Del Duca: I know we look similar, Mr. Chair.

Mrs. Laura Albanese: It's the hair.

Mr. Steven Del Duca: It is the hair, yes.

Thanks very much, Chair, and thank you very much, Dr. Ivanco, for answering the questions from all of us. I have a couple of other things I did want to talk about.

You mentioned in the opening to your—actually, I don't remember if it was the preamble from Mr. Yaka-

buski's questions or if you actually said it yourself. But with respect to your involvement in Oakville, somewhere in today's answers or testimony there was a reference to an organization called C4CA.

Dr. Michael Ivanco: That was the catchy title.

Mr. Steven Del Duca: Can you just explain what that is, or what that was?

Dr. Michael Ivanco: Citizens for Clean Air was a grassroots organization established in Oakville. It was my understanding that they started—I can't remember if they put ads out in the paper or if I saw something on a bulletin board or a local grocery store or something like that—looking for volunteers. So I came to the inaugural meeting, where they were looking for people to sign up to be on various committees. I listened to the presentations. I signed up for the environmental review committee.

Mr. Steven Del Duca: Do you live in Oakville?

Dr. Michael Ivanco: I do. I live in west Oakville. For what it's worth, I'm not a NIMBY. I didn't live in east Oakville, which is where the plant was originally sited.

Mr. Steven Del Duca: I understand completely.

A couple of things: I don't know exactly how long you were involved in C4CA or to what extent you were involved, but I'm guessing—you can correct me if I'm wrong—that, given your background in the energy world, given that you live in the community and given that you took the interest, you took it upon yourself to show the initiative and get involved in what was taking place there, you probably would have been aware—and if not, I guess I'll ask that question. Were you aware that throughout that process leading up to the final decision that was made in Oakville members from the PC Party had very clearly gone on record regarding their feelings with respect to the Oakville power plant? Are you aware or do you remember hearing at that time, through meetings, perhaps one-on-one meetings or community meetings with members of the PC caucus, what they might have said regarding their thoughts with respect to Oakville?

Dr. Michael Ivanco: No. What I can say is that the people I worked with were from all political stripes.

Mr. Steven Del Duca: Would it surprise you, given the work that you did with C4CA, to know or to hear that, for example, Mr. Ted Chudleigh, the Conservative MPP from Halton, said on June 1, 2010, here in the Legislature: "The people of Oakville have told you they don't want the proposed gas-fired power plant ... and I agree with them"? Would you be surprised to learn that a member of that caucus would be taking a fairly strong position in opposition to the Oakville power plant?

Dr. Michael Ivanco: No. During the elections, I went to all-candidate meetings. I think everybody in Oakville said they would close the gas plants down.

Mr. Steven Del Duca: And Mr. Hudak himself, the Leader of the Opposition, even though when he appeared here at committee and refused to answer my questions that I asked him repeatedly about—his plans, his calculations, his analysis with respect to the power plant.

On September 25, 2011, in the *Globe and Mail*, Mr. Hudak said, "We oppose these projects in Oakville and

Mississauga." That probably wouldn't come as a surprise to you as well.

Dr. Michael Ivanco: I don't remember it, but given that in Oakville I worked with people who were from all the three major parties and they were all against the gas plant, I suppose it wouldn't surprise me. I didn't know specifically that he'd said anything like that.

Mr. Steven Del Duca: No, that's good. So it's important to stress as well that you just said it now twice in the answers to questions that I've asked: Members from all three parties, just so that we're clear and on the record, when you refer to three parties, that would be including Ontario's NDP as well, that they were clearly on record as being opposed—from your experience locally in Oakville, being opposed to the Oakville power plant.

Dr. Michael Ivanco: I went to all-candidates meetings, and certainly the candidates from—Kevin Flynn and Chudleigh were at those meetings. My recollection is that they said they were in opposition to the gas plants. I can't remember if the NDP candidate said he was, or the Green candidate. I can't remember.

Mr. Steven Del Duca: For example again, on October 7, 2010, Peter Tabuns, the NDP member from Toronto—Danforth, speaking to a publication called *Inside Halton*, said, "I don't agree with the Oakville power plant."

The NDP member from Beaches—East York, on December 2, 2010, here in the Legislature read into Hansard: "I'm glad that the people of Oakville came to their senses. I'm glad the people of Oakville hired Erin Brockovich and did all the things that they did in order to have this"—and I'm assuming "this" means the Oakville power plant—"killed."

So it wouldn't come as a shock to you then, obviously, to know that from NDP leader Andrea Horwath all the way down through their food chain to their local candidate, they repeatedly went on the record throughout this process opposing the Oakville power plant as well?

Dr. Michael Ivanco: I'll have to take your word for it. I don't know all those facts.

Mr. John Yakabuski: A point of order, Chair.

The Vice-Chair (Mr. Phil McNeely): Mr. Yakabuski.

Mr. John Yakabuski: I think the witness has made it clear about what he does and doesn't know. The questioning from the government at this point amounts to nothing less than badgering. He has made it clear about what he knows about the history of the decision. It's on record; it was a political decision by the Liberal campaign team. What led to that is not the reason that Dr. Ivanco was brought here today. He was brought here because of his expertise in power system operation, particularly in the nuclear field. If we were to confine our questions to something where the committee can gain valuable knowledge from his visit, I think we'd all be better off. But continuing to badger him by name after name, whether he was reading so-and-so's mail or otherwise or having intimate conversations with members of this party or other parties, is not really helpful to this committee. I think we should stick to what our knitting is

here with this witness and ask him the questions that are pertinent to his field of expertise.

The Vice-Chair (Mr. Phil McNeely): I understand, but I feel that the questioning is relevant. It goes to testimony that has been given at this committee—

Mr. John Yakabuski: And he keeps saying the same answer because—and Mr. Del Duca asked him about different people—

Mr. Steven Del Duca: Mr. Chair, with the greatest amount of empathy that I can muster for that particular member opposite, I understand he feels guilty because he in fact opened up this line of questioning by asking the witness about his involvement in Oakville with C4CA. Now that the door is open, I feel compelled to walk through it, and gladly so.

The Vice-Chair (Mr. Phil McNeely): Proceed with your questioning.

Mr. Steven Del Duca: Just out of curiosity, because there's a bit of confusion right now about what exactly you've said: Based on your involvement in Oakville with C4CA and as a resident of Oakville, it wouldn't be a surprise to you to learn that all political parties and representatives from those parties had the exact same opinion with respect to the Oakville power plant prior to the final decision being made, whether they were Conservatives, New Democrats, Greens, whatever the case may be? Notwithstanding the quotes that I've given you, just your general impression and that of your neighbours and people with whom you've been involved in Oakville—there was a clear sense from all-candidates meetings, from stuff that might have appeared on YouTube, from stuff that would have appeared in local publications like Inside Halton and elsewhere—it wouldn't come as a shock to you to learn that all parties were pretty much on the same page?

Dr. Michael Ivanco: All I can tell you is that when I worked on committee, I worked on the environmental review committee, which had people I know who were from all political stripes. We did not see it as a political issue; we saw it as a technical issue. We were all on the same side in terms of being opposed to it.

Mr. Steven Del Duca: Okay. Thank you very much for that.

I know that we had talked a little bit earlier about the notion of engaging with municipalities, and we did go over this territory a little bit in your opening round of questions, but that was before we learned, or that we heard clearly, that you actually played a role in the technical side of things in your own community.

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Perhaps you can elaborate again, with respect to how, as a resident from one of the affected areas that we're talking about, you would recommend the government contemplate engaging with municipalities, with communities, with neighbourhoods, in the future around siting energy infrastructure.

Dr. Michael Ivanco: Well, my recommendation would be that they don't do it post facto, that they do it ahead of time instead of after they've made the decision.

Mr. Steven Del Duca: So can you elaborate a little bit from your perspective how things might be improved that way?

Dr. Michael Ivanco: Well, the biggest engagement I saw of the public was when TransCanada—I believe it was TransCanada that was building that particular plant—started having public meetings to try to get people on side, explaining to them the details of the project. They'd have all these work stations with pictures, diagrams, experts and so on. But they did all that after they were already starting to build the plant. If they had done that a couple of years ahead of time, before any decisions were made, that would have been a heck of a lot better. I think people would have felt more comfort. But I think there was a feeling that we were kind of being railroaded into it because the decision had already been made to build the plants in those places. So all this consultation and propagandizing, if you want to call it that, took place after the fact, not beforehand.

Mr. Steven Del Duca: Do you know roughly when that took place, this TransCanada meeting you're talking about?

Dr. Michael Ivanco: Oh, boy. It was a convention centre at the Holiday Inn in Oakville at Bronte and Wyecroft. I actually can't remember if it was 2009 or 2010. It was a few years ago now. It was presented as a fait accompli that the plant would be built, and, "Now, here, citizens, is why you shouldn't be worried about it," instead of the other way around.

Mr. Steven Del Duca: Do you know of any other jurisdictions in Ontario that you feel Ontario could, perhaps, learn from regarding siting energy infrastructure? Are there any that you would recommend we look at?

Dr. Michael Ivanco: Well, I would say not so much municipalities, but processes. For example, I just gave a presentation in September in Kincardine, and they're looking at siting a low- and intermediate-level waste depository for nuclear fuel, and they're having public hearings first—you know, concept hearings. They have a concept; they have public hearings; they have experts come; months and months of testimony—all these kinds of things—and in the end, it may not be built there. That's kind of the understanding, although there's a proponent for it. The gas plants were not presented that way. It was presented as a fait accompli.

Mr. Steven Del Duca: I think that—

The Vice-Chair (Mr. Phil McNeely): Thank you very much. That's the end—

Mr. Steven Del Duca: Yes. Thank you very much.

The Vice-Chair (Mr. Phil McNeely): We'll go to Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Michael. I appreciate your testimony today. At least what we did receive from Mr. Del Duca's rather political questions in the second half is that we saw a good illustration of the bulldogging and the bullying that went on on the part of the Liberal government with regard to the establishment and the contracting of these natural gas plants,

one that ended up costing us \$1.1 billion that is now the responsibility of the electricity ratepayer to pay, when, in fact, we believe that it should be paid by the Liberal Party. Maybe Peter Faist—Feist or Faste or whatever his name is. I call him Feist because it rhymes with heist. But, anyway, maybe he could find a way to help them out—

Mr. Bob Delaney: Chair, on a point of order: This is a rhetorical flourish that is completely out of order and inappropriate.

Mr. John Yakabuski: It's totally to do with the Oakville—

The Vice-Chair (Mr. Phil McNeely): Mr. Yakabuski, if you could keep more to the—

Mr. John Yakabuski: I certainly will.

So we appreciate your candid responses to him, as difficult as it was, because he was asking you questions that you really had no direct knowledge of. But I do appreciate you coming, again. We appreciate the work that you do through SPEA in helping us understand and hopefully build a better and more robust system for the future as well. Thank you.

Dr. Michael Ivanko: Thanks.

The Vice-Chair (Mr. Phil McNeely): The third party: Mr. Singh.

Mr. Jagmeet Singh: No further questions. Thank you.

The Vice-Chair (Mr. Phil McNeely): That brings the conclusion to this session, so we'll recess until 3 p.m.

Mr. Jagmeet Singh: On a point of order.

The Vice-Chair (Mr. Phil McNeely): Yes.

Mr. Jagmeet Singh: I just want to put it back on the record, very briefly—this is not for the witness.

The Vice-Chair (Mr. Phil McNeely): We'll dismiss the witness first. Thank you very much for being here today.

COMMITTEE BUSINESS

Mr. Jagmeet Singh: Thank you very much, Mr. Chair. I just want to make it very clear again that I want an update on the following pieces of information. I understand that we called Mr. Faist last Thursday, and I'd like an update about whether or not he is going to appear at this committee. I want to understand how many times we have called him, if we've called him; if we have emailed him, how many times we have emailed him and if he has responded; and, if we sent him a letter, how many times we sent a letter and when we sent the letter. Because if we are not successful in contacting Mr. Faist to attend, we will be seeking a Speaker's warrant. This is something that is absolutely unacceptable. If the committee requests someone to appear, the committee has the power to compel that appearance, and we certainly will proceed with that.

We want to hear from Mr. Faist. We want him to testify here in committee, and we want to ensure that we have taken the steps to give Mr. Faist the opportunity to respond. We want to ensure that we have done our due diligence by email, letter and phone call, and if he is still

not responsive, then we certainly want to proceed to the Speaker's warrant. I want to make sure that we have done all the steps.

The Vice-Chair (Mr. Phil McNeely): Would you like to respond, Clerk?

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes. As of right now, Mr. Faist was listed as number 2 on your witness list, so we are proceeding with your number 1 witness for this Thursday. In terms of finding contact information, we weren't able to find a lot of contact information. We were given a phone number that was the wrong phone number. We were then given a Twitter account, but we don't contact witnesses via Twitter. In terms of an email address, we do not have an email address for him.

Mr. John Yakabuski: It was wiped clean.

The Clerk of the Committee (Ms. Tamara Poman-ski): Lately, we were given an address, and a letter was sent out end of day yesterday via Purolator to his address for invitation for next Thursday. That's all I have for information. I don't know if he has received it yet. We requested for a signature etc.

Mr. Jagmeet Singh: Okay. Thank you for the update.

Mr. Bob Delaney: And, Chair, on the very same point of order, the government may request the witnesses that it also has repeatedly asked during the past year to similarly be included in any such Speaker's warrant. The government does reserve the right to pursue that as well.

Mr. John Yakabuski: Perhaps I could recommend they send the notice to Mr. Faist to Wiarton. I think he has gone groundhog.

The Vice-Chair (Mr. Phil McNeely): We'll recess this meeting until 3 p.m. this afternoon. Thank you.

The committee recessed from 1007 to 1501.

MR. GREG ORENCSAK

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, Mr. Greg Orenszak, associate deputy minister of the Office of the Budget and Treasury Board, Ministry of Finance, government of Ontario, who will be now affirmed by our able Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Greg Orenszak: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Orenszak. Just before I invited you to be sworn in—if there is a little instability in the chairs or furniture for the PC side, just let us know.

You have five minutes to make your opening address. Please begin.

Mr. Greg Orenszak: Okay. Thank you, members of the committee. I'll be brief. Good afternoon. My name is Greg Orenszak. I have been with the Ontario public

service since 1999, and have held a number of positions with the Ministry of Finance and Cabinet Office. I currently serve as the associate deputy minister of the Office of the Budget and Treasury Board in the Ministry of Finance, a position that I have held since November 2010. In the coming weeks, I will assume the role of Deputy Minister of Government Services and Secretary of the Management Board of Cabinet.

I appreciate the opportunity to appear today and to speak to the matters before this committee. I would like to advise the committee that while I was aware of the government's decision to cancel and relocate the Oakville and Mississauga gas plants, I had no direct involvement in these transactions at the time the decisions were made and announced.

As these decisions were being implemented, I would have been involved, as part of the Ministry of Finance, in various aspects of those files, particularly when decisions or authorities were coming forward to treasury board for approval. At those points in time, our role was to work with the Ministry of Energy and Cabinet Office to offer our best advice to members of treasury board on the implementation of the decisions or authorities based on the submissions made to treasury board by the Ministry of Energy. In this capacity, we provide advice on the fiscal and controllership aspects of submissions before treasury board as the government implements its policy decisions.

With that, I would be pleased to answer your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Orenszak. Just before I provide the floor to the PC side, we certainly welcome you to the Ministry of Government Services. I know you have a very able parliamentary assistant there, so I'm sure you'll interact with him.

Ms. MacLeod?

Ms. Lisa MacLeod: Thanks very much. So if we could, just state where you work now and where you previously worked.

Mr. Greg Orenszak: As I mentioned in my opening statement, Ms. MacLeod, I currently work in the Ministry of Finance, in the Office of the Budget and Treasury Board, as the associate deputy minister.

Ms. Lisa MacLeod: And previously?

Mr. Greg Orenszak: I've been in this position since November 2010. Prior to that, I also worked in the Ministry of Finance as the assistant deputy minister of fiscal strategy. Prior to that, I spent three years in Cabinet Office, and even prior to that, I again worked in the Ministry of Finance.

Ms. Lisa MacLeod: Right. So I want to talk a little bit about your time, first at the ministry, but also I think your insight might be helpful to us with respect to how things work in the Cabinet Office, particularly as it comes up with respect to the OPP ITO and some of the discussions that were happening between Mr. Wallace, Mr. Nicholl and others with respect to the bureaucracy.

You would have been at the Ministry of Finance at the period of time which the government was citing the \$40-

million cancellation costs. Now, we've had Dwight Duncan in here, your former boss, who would have indicated to us that \$40 million was what was impacted by the tax base, and the rate base would pick up the additional money. For a long time, the government continually stood in the House and said that it was only \$40 million, not any more than that. The OPA had pegged it at \$310 million, and of course the Auditor General says that it's at least \$1.1 billion for the cancellation. I'm wondering if at any time, did you provide a forecast to either the Premier's office or the Minister of Energy, indicating what the cost might be, or work with the OPA on what those costs might be for the ratepayer, outside of the \$40 million?

Mr. Greg Orenszak: I can only speak to my role directly in terms of the circumstances that you cite, Ms. MacLeod. I work in the Office of the Budget and Treasury Board, so we have a role to play in terms of monitoring risks and impacts on the fiscal plan. The \$40 million was the impact on the fiscal plan that eventually crystallized.

We also, as part of the normal course of our business, work with ministries to monitor risks that could potentially impact on the fiscal plan, but those are risks that are reported to us by ministries.

Ms. Lisa MacLeod: What risks would have been reported to you by, for example, the Ministry of Energy or the OPA?

Mr. Greg Orenszak: We would not have dealt directly with the OPA. I'd have to go back and look at what kind of reports the Ministry of Energy would have filed with the treasury board in terms of their potential risks as it came to their quarterly reports.

Ms. Lisa MacLeod: Just out of curiosity, why wouldn't you have done that before you came here today?

Mr. Greg Orenszak: I'm sorry?

Ms. Lisa MacLeod: Why wouldn't you have done that prior to coming today: to look at the risks that would have been submitted to treasury board from the Ministry of Energy on this?

Mr. Greg Orenszak: I looked through my files and, as I mentioned in my opening statement, the most relevant input I have is the decision-making that came before treasury board. I did review the documentation that came before treasury board when it came to specific decision-making and authorities that were sought. Risk reports are filed regularly, and I wouldn't normally personally review those as part of the normal course of business.

Ms. Lisa MacLeod: No, but just in terms of process, there would have been submissions from the Ministry of Energy to treasury board detailing the risks associated with this, and you would have assessed those risks and, with your minister and his political staff, made a decision based on that. Of course, the problem with the cancelled gas plants is that they were cancelled, so you just had to deal with the cost anyway; you couldn't really make any recommendations because the cancellation took place on the campaign trail, so it had to be done. Is it safe to say

that this decision was made without any foresight or thought put into what this might cost not only the tax base, but also the rate base?

Mr. Greg Orensak: I cannot speak specifically to your line of reasoning. What you asked me earlier was: “Were there risk reports?” There are quarterly risk reports that are submitted to treasury board, not only by the Ministry of Energy but all ministries across government. It’s part of the risk-management framework that treasury board concerns itself with.

Ms. Lisa MacLeod: So why can’t you answer my question? I asked a pretty specific question, not based on my own reasoning; it’s actually based in fact that the decision was made to cancel the gas plants. The government said that it was \$40 million in sunk costs, but that’s all they were willing to give. I’m asking you directly: At any time, did the government and the Ministry of Energy come forward to treasury board with a cost such as \$40 million or \$737 million or \$1.1 billion, to Dwight Duncan or to you as an ADM, and ask for this to be included in the government’s financial plan?

Mr. Greg Orensak: I kind of heard two questions from you—

Ms. Lisa MacLeod: I’d love an answer for both of them.

Mr. Greg Orensak: In terms of your first question, I had no direct involvement at the time these decisions were made, so I can’t answer your first question specifically—

Ms. Lisa MacLeod: What do you mean by “direct involvement”? I’m asking you if you were a member of the bureaucracy that would have made information available or received information. What are you talking about with “no direct involvement”? If you were in the Ministry of Finance and you were dealing with the treasury board submissions, would you not have seen any of these submissions?

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Mr. Greg Orensak: Again, just to parse your questions: You asked a very specific question about direct involvement. Let me clarify that; I owe that to you. I had no direct involvement in terms of when the decision was made to cancel these power plants. No one came up to me and asked me, “Do you think this is a good idea? Do you know how much that would cost?”

Ms. Lisa MacLeod: Right, and nobody here thinks that you were asked by Dalton McGuinty. What I’m asking you, though, is very specific—

Mr. Steven Del Duca: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca, a point of order.

Mr. Steven Del Duca: I think it might be helpful, because I believe the witness is actually making a good-faith effort to answer one of the series of questions the member opposite has asked, if we actually give him a chance to complete a thought.

Ms. Lisa MacLeod: I’m entitled to ask the questions as I see fit, and we’ll allow you to do the same thing.

Mr. Steven Del Duca: That’s okay. I don’t need the flippancy. It would be helpful for you to give him a chance—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. I will return the floor momentarily to Ms. MacLeod. I think all of us are aware of the protocol. We’re just debating on this side if you’re just badgering the witness at all. But in any case—

Ms. Lisa MacLeod: I’m not trying to badger. I have a serious question.

The Chair (Mr. Shafiq Qaadri): —the floor is yours.

Ms. Lisa MacLeod: We all understand how cabinet works. Treasury board submissions go from a minister’s staff or the minister. It’s debated in cabinet. This isn’t new. I didn’t ask you if you were involved and if you cancelled the gas plant. Perhaps other people have asked that question in the past and you were pre-programmed to deliver it. I’m simply asking you, did a submission ever go forward to treasury board over the \$40-million cancellation with risks that said it could cost up to \$1.1 billion?

Mr. Greg Orensak: There were submissions to treasury board. I think those submissions have been made available to this committee. There were two submission in particular that identified a mandate for negotiations in terms of what those sunk costs would be, and then there was a subsequent submission that came back to treasury board for authorities for approval to pay those sunk costs, which were \$40 million.

Ms. Lisa MacLeod: At any time, were the risks given to treasury board from the Ministry of Energy outlining the fact that the OPA and others would be obligated to pay far beyond the \$40 million?

Mr. Greg Orensak: As part of those submissions, I think there were a variety of costs that were identified, including the sunk costs.

Ms. Lisa MacLeod: We know that the true cost wasn’t the sunk cost. We know, and you’ve actually said, that there were risks and impacts. I’m asking you what those risks and impacts would be—identified by the Ministry of Energy.

Mr. Greg Orensak: A couple of things on that: I think there was an Auditor General’s report on both the gas plants which details the various costs associated with cancelling the plants. I think those reports speak for themselves in terms of the costs.

As part of the work at treasury board, as I’ve tried to explain to you, we are mindful of understanding, tracking and making sure that there are appropriate approvals and authorities in place for impacts to the fiscal plan. In the case of the Oakville cancellation, that fiscal plan impact was \$40 million. There were submissions to treasury board with regard to seeking approval and authority to incur those costs on the fiscal plan.

Ms. Lisa MacLeod: Okay. Let’s move on. I don’t think we’re getting the answers to the questions.

Just quickly: Have you ever had conversations with the former chief of staff to the former Premier, David Livingston?

Mr. Greg Orensak: Yes.

Ms. Lisa MacLeod: Ever on the gas plant scandal and the cost of it?

Mr. Greg Orensak: No.

Ms. Lisa MacLeod: You've never spoken to him in terms of a treasury board submission about some of the challenges that were developing as a result of the auditor's report or any of the investigations taking place by the OPP or any other concerns?

Mr. Greg Orensak: I had no such conversations with David Livingston.

Ms. Lisa MacLeod: You never talked about deletion of any emails talking about sunk costs or any of the other costs that would have emerged as a result of the change? You wouldn't have talked about passwords, any of those things?

Mr. Greg Orensak: No.

Ms. Lisa MacLeod: Okay. I guess we have no further questions.

The Chair (Mr. Shafiq Qaadri): Thank you. Before you cede the floor—Mr. Yakabuski?

Ms. Lisa MacLeod: We're okay for now.

The Chair (Mr. Shafiq Qaadri): All right. Thank you.

To the NDP side: Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Mr. Chairman, and thank you, Mr. Orensak, for being here this afternoon. Can you describe your role in record searches? We have some documents, I think—Clerk, do you have those?

The Clerk of the Committee (Ms. Tamara Poman-ski): Oh, yes. Sorry. We haven't done this much.

Mr. Peter Tabuns: I know. You're out of practice. It's possible we may get back into practice.

Interjection: I apologize. Do you have your copy?

Mr. Peter Tabuns: I have a copy, yes.

So our document 1, at the bottom of page 1, has an email from you to Lezlie Bain and others about consequential amendments to the search protocol that had been put together. Can you tell us about your role in these record searches?

Mr. Greg Orensak: Absolutely. There were various requests—

Interjections.

Mr. Peter Tabuns: And I apologize, but I have noisy neighbours. If you could speak more loudly, that would be good.

Mr. Greg Orensak: Sure.

Mr. Steven Del Duca: They could be quieter.

Mr. Peter Tabuns: Well, that may happen too.

Mr. Greg Orensak: There were several requests from this committee to the Ministry of Finance in terms of documents. The Office of the Budget and Treasury Board is part of the Ministry of Finance. It was specifically identified in some of the motions from the committee. So my role, as the head of the Office of the Budget and Treasury Board—

The Chair (Mr. Shafiq Qaadri): Sorry, Mr. Orensak. Would you mind aiming yourself at that microphone a little bit more?

Mr. Greg Orensak: Sorry.

My role, as part of the Office of the Budget and Treasury Board was to ensure that people in my office who would have had or likely would have had documents conducted a search according to the parameters that were used more broadly in the ministry. I think this email, this first document, speaks to that.

Mr. Peter Tabuns: Now, were you managing this whole process? Were you simply a participant in it? What was your role?

Mr. Greg Orensak: I was not managing the process; I was a participant in the process. The request for documents extended beyond the Office of the Budget and Treasury Board.

Mr. Peter Tabuns: Who led it within budget and treasury board?

Mr. Greg Orensak: We had various people involved in the Office of the Budget and Treasury Board. We had a coordinator, we had various executive assistants to assistant deputy ministers, for example, who would have been involved in terms of helping to search for documents, making sure that people had appropriate instructions to do the search.

Mr. Peter Tabuns: Who had overall responsibility for moving the project forward?

Mr. Greg Orensak: Overall, the project would have reported to the deputy minister's office.

Mr. Peter Tabuns: You noted in your email here that you made a consequential amendment to the memo, and I couldn't find it. It's possible it just wasn't properly marked. What was it that you changed?

Mr. Greg Orensak: I'd have to look at the memo, and I'm afraid it's a 14-page memorandum, so—

Mr. Peter Tabuns: It is long, actually.

Mr. Greg Orensak: We did take some care in terms of the search for these documents, so I don't remember what my change was. I apologize, but I don't remember off the top of my head as to what that would have been.

Mr. Peter Tabuns: Okay. Were you aware of any computers in your office having their hard drives wiped at any point?

Mr. Greg Orensak: No.

Mr. Peter Tabuns: All right. When treasury board was preparing documents for production to the committee, were you ever made aware of inconsistencies in record-keeping in your or any other department?

Mr. Greg Orensak: Can you just repeat that? Any what?

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Mr. Peter Tabuns: When treasury board was preparing documents for production to the committee, were you ever made aware of inconsistencies in record-keeping, either in treasury board or in other offices?

Mr. Greg Orensak: No, I was not.

Mr. Peter Tabuns: Were you ever made aware of the deletion of records?

Mr. Greg Orensak: No, I was not.

Mr. Peter Tabuns: Any inconsistent actions by political staff that were a subject of discussion?

Mr. Greg Orensak: No.

Mr. Peter Tabuns: Were there any other things that were striking to you that this committee should be aware of, regarding record-keeping and production?

Mr. Greg Orensak: Not to my knowledge, within the Ministry of Finance and the Office of the Budget and Treasury Board, for which I'm responsible.

Mr. Peter Tabuns: We've been told that when the new Premier came in, rules were changed and procedures were changed. What were you told about the change in rules or procedures after February 2013 with regard to record-keeping?

Mr. Greg Orensak: There were no changes to procedures as it came to the public service. We have—and I can speak to my office—record-keeping protocols and records management schedules that we follow. There weren't any changes that would have affected us. I'm not aware of the specifics in terms of any changes that you speak to within the Premier's office; that would have been outside of my purview.

Mr. Peter Tabuns: Not just in the Premier's office, but in general, did you see a change in rules or procedures after the new Premier came into office with regard to record-keeping?

Mr. Greg Orensak: As I said, in the public service and the Ministry of Finance Office of the Budget and Treasury Board, we've always kept records. There was no change to that.

Mr. Peter Tabuns: So no big directives, no "We have to do things differently"? You just continued on as you had previously.

Mr. Greg Orensak: Yes.

Mr. Peter Tabuns: Was it fairly standard for people, when they left, to turn over records for the archives or for other records management in your ministry?

Mr. Greg Orensak: Yes. I think we have record-keeping protocols in place, and people have an obligation to follow those protocols. To the best of my knowledge, the folks in my organization follow those protocols.

Mr. Peter Tabuns: Were you or your colleagues aware of the existence of the Archives and Record-keeping Act?

Mr. Greg Orensak: I can speak for myself.

Mr. Peter Tabuns: That would be fine.

Mr. Greg Orensak: I'm certainly aware of the Archives and Recordkeeping Act, yes.

Mr. Jagmeet Singh: Did you follow the policies elucidated by that act in terms of your obligation to maintain records?

Mr. Greg Orensak: Yes. Before you came in, Mr. Singh, I was describing to the committee that we have record-keeping schedules in the Office of the Budget and Treasury Board that we follow and that the staff have a positive obligation to follow.

Mr. Peter Tabuns: Would you have found it strange if someone from outside the Ontario public service came into your office and started changing computers?

Mr. Greg Orensak: I obviously see where you're going, but I can't comment on that. I can't make an infer-

ence on that. Certainly if someone showed up in my office who I didn't know, I would ask the question.

Mr. Peter Tabuns: Okay.

Mr. Jagmeet Singh: Would you allow an independent person from your organization to have access to your computers, and if that was to happen, would that set off alarms for you?

Mr. Greg Orensak: Again, I can only speak to my organization.

Mr. Jagmeet Singh: Yes, in your organization.

Mr. Greg Orensak: Access to computers and computer accounts is, again, governed by an IN/IT—an information and information technology—protocol. That protocol would be followed in terms of creating accounts for new staff when they come on board.

Mr. Jagmeet Singh: Would it be consistent with your protocol if someone who was not a part of your specific organization or where you have sway over—if someone was not a part of that, would it be appropriate within your protocol to allow them to have access to your computers and to perhaps delete files or do anything they wanted with those computers? Would that be something that's within your protocol?

Mr. Greg Orensak: I don't have the IT protocols with me, and I'm not responsible for the day-to-day management of those IT protocols, but people who have computer accounts in my organization are employees who work there.

Mr. Jagmeet Singh: So if someone was not an employee of your organization, would they be able to come in and log in to computers and delete files?

Mr. Greg Orensak: You need to have access to a computer before you can do anything to it. You can only gain access if you follow those IT protocols. You'd have to be an employee. We may have contractors who may need access to government computers. There's a protocol for granting access to government computers for contractors.

Mr. Jagmeet Singh: And what's that protocol to give access to a contractor?

Mr. Greg Orensak: I don't have that—

Mr. Jagmeet Singh: Roughly, though, what is it?

Mr. Greg Orensak: I don't have that on me. I can undertake to follow up on that for you, Mr. Singh.

Mr. Jagmeet Singh: Sure. I'd ask you to do that.

Mr. Peter Tabuns: In fact, if that could be noted in Hansard that Mr. Orensak will provide us with the protocol for outside contractors to have access to computers, that would be very useful.

On a different line of questioning, can you describe, for yourself, your timeline of how you understood the costs of the gas plants cancellation? When did you first become aware of this as an issue? How did it change over time?

Mr. Greg Orensak: Are you specifically asking about—

Mr. Peter Tabuns: We'll start with the Oakville plant.

Mr. Greg Orenszak: As I tried to explain earlier, as part of my opening comments, my interaction with the implementation of the government's policy decisions would have been through the decision-making that would have taken place as part of treasury board. I support treasury board. There were two submissions to treasury board with regard to the Oakville plant: one in September 2012 and another one in December 2012.

Mr. Peter Tabuns: So were you involved with that first request in September 2012?

Mr. Greg Orenszak: I was aware of the request. I did not participate in the decision-making.

Mr. Peter Tabuns: If you weren't part of decision-making, were you fully aware of what decision-making was going on?

Mr. Greg Orenszak: I was aware of the submission that the ministry had presented, and I was aware of the outcome of the decision that was made by treasury board, which is summarized as all treasury board decisions are in the minute.

Mr. Peter Tabuns: So in December 2012, what was your role, your involvement, in the decision to make that settlement and pay that money?

Mr. Greg Orenszak: I'm not a decision-maker, Mr. Tabuns. I have no role in the decision-making. I support decision-makers. My role, as the associate deputy minister supporting treasury board, is to review—my staff review—the ministry's submission and support the ministry as it makes a presentation to treasury board. Treasury board members make a decision that's summarized in a minute that my staff would keep track of.

Mr. Peter Tabuns: Were you made aware that there were more costs than the \$40 million in sunk costs at that time?

Mr. Greg Orenszak: I don't have the treasury board submission before me, but I think they have been made available to the committee. There was \$40 million of sunk costs that were approved as part of the treasury board decision-making that had a direct fiscal impact. I do believe that the treasury board submissions would have talked about other costs as well, but treasury board concerns itself with managing the fiscal plan, the fiscal impact, of government decisions—very mindful of ensuring proper government authorities are in place for incurring spending. So the actual fiscal impact was \$40 million, which treasury board concerned itself with.

Mr. Peter Tabuns: So your concern with the financial impact was the impact on the expenditure of funds from general revenues, not on the costs that are charged to people paying electricity rates. Is that correct?

Mr. Greg Orenszak: Basically the impact on the books—on the financial statements of the province.

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Mr. Peter Tabuns: And the impact on the rates don't come into or are not factored into your approach. Is that correct?

Mr. Greg Orenszak: The actual decision-making role of treasury board is to look at and manage the province's finances and the province's books. Those were the spe-

cific authorities that treasury board had approved associated with the Oakville plant, and that was \$40 million that showed up as a cost on the province's financial statements.

Mr. Peter Tabuns: Can you explain the steps you went through in approving that spending? "You" meaning the treasury board.

Mr. Greg Orenszak: The treasury board. Treasury board, as part of the normal course in terms of how it does its business, receives a request from a ministry identifying the decision that that ministry is seeking. It's supported by what we call a treasury board submission. That's brought before treasury board. It's discussed at treasury board. Ministers who are members of treasury board make a decision based on that, and then treasury board decisions need to be confirmed by cabinet.

Mr. Peter Tabuns: So the staff of treasury board take reports from the ministry, do their own assessment, check the numbers, and make a presentation to—and when you say "treasury board," I assume senior executives in the treasury board?

Mr. Greg Orenszak: No. When I refer to treasury board—and I just want to be very clear about this. I apologize for not being so earlier. Treasury board is the group of ministers that make up treasury board. They are the decision-makers. Ministers sit around the table. They receive a presentation sometimes from my staff, sometimes from the sponsoring ministry and sometimes from both. They make a decision based on the request that's before them.

Mr. Peter Tabuns: Do you look at things such as the difference between original budgeted amounts and amounts finally spent on projects?

Mr. Greg Orenszak: It depends on the project. It's on a case-by-case basis, but absolutely that's one of the things that we might look at.

Mr. Peter Tabuns: Normally, when you go forward with a spending project, you have a budget and a target for the amount you're going to spend. Is that correct?

Mr. Greg Orenszak: That is very much so the case. Oftentimes there are projected amounts for government spending that are laid out in the estimates, for example, and treasury board would look at those costs.

Mr. Peter Tabuns: We were told that it cost \$40 million to cancel the Oakville gas plant and \$180 million to cancel the Mississauga gas plant. The auditor put those costs at around \$1.1 billion. Are variances of 500% at all common in our operations?

Mr. Greg Orenszak: I understand where you're coming from, and I appreciate your inference. I don't think I can speculate on that. I can say—

Mr. Peter Tabuns: I don't need you to speculate. Is your experience that typically projects come in five times higher than budgeted?

Mr. Greg Orenszak: It would be unusual for that to happen. Again, we'd be looking carefully at the assumptions that go into estimating those costs and who pays them.

Mr. Peter Tabuns: So it's unusual for us to go 500% over?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Greg Orensak: I think you've stated that.

Mr. Peter Tabuns: Okay. Were you involved in preparing for estimates during July 2012 and preparing for Dwight Duncan's appearance before estimates committee?

Mr. Greg Orensak: I probably was. I didn't check my notes, but in the normal course of events I would be if I was around, but I think I probably was.

Mr. Peter Tabuns: It may be that I will be told to stop shortly, but document 5, at the end, lists you as one of the participants.

Mr. Greg Orensak: Yes.

Mr. Peter Tabuns: Do you have recollection of discussion with Mr. Duncan prior to the committee hearings, preparing for discussion of the Mississauga cancellation estimates?

Mr. Greg Orensak: I have no specific recollection of that in terms of Mississauga, no.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns.

To the governing side: Mr. Del Duca.

Mr. Steven Del Duca: Thank you very much, Mr. Chair, and thank you, Mr. Orensak, for being here this afternoon with us.

I know you've covered a lot of ground with the questioning you've received from both of the opposition caucuses. I just wanted to go over a couple of things. I also know that you did state fairly clearly in your opening statement about your own background, but I did want to say thank you for joining us. Congratulations, I guess, is in order as well, because I understand you have a new upcoming assignment and you'll have to deal with a certain other parliamentary assistant, but that's okay.

I think you might know this or you might not know this: You are actually the 84th witness that this committee is hearing from since this process began, and among the many witnesses, we have heard from your soon-to-be predecessor, former MGS deputy minister, Kevin Costante; we've heard from the Deputy Minister of Energy, Serge Imbrogno, among many other current and former ministers. The Premier has appeared twice. The former Premier also appeared twice, and the former and current Ministers of Finance, Dwight Duncan and also Charles Sousa. You may also know that the committee has been sitting for over a year now. We have seen, I think, 36 motions for document production, all of which have passed with unanimous consent and which have been co-operated with fully from the perspective of the government side.

When the Premier was here, she shared with this committee, and has said time and time again, that under the new government and under her watch, she has opened government to an unprecedented degree. A big part of this mandate includes new training practices. I know this was discussed just a few minutes ago, but I think it's important for us to make sure this is clearly understood: new training practices for political staff issued under the directions of Premier Wynne. These new training prac-

tices were directly impacted with respect to the Information and Privacy Commissioner, what she had to say in her particular report, and the Ministry of Government Services, of course, will serve, I guess, in terms of a broad overlay to these new training mechanisms and document retention practices.

I wanted to ask you a few questions about your new role as incoming deputy minister to the Ministry of Government Services, but I want to back up for a quick second. You may have mentioned this earlier. How long have you worked in the Ontario public service?

Mr. Greg Orensak: I've worked in the Ontario public service since 1999.

Mr. Steven Del Duca: Since 1999?

Mr. Greg Orensak: Yes.

Mr. Steven Del Duca: Thank you. I know that you've appeared at committee before—committees, generally speaking, before; for example, I think the committee on estimates, in your current role at the Ministry of Finance, and a few times with the former finance minister Dwight Duncan and the current minister.

Mr. Greg Orensak: Yes.

Mr. Steven Del Duca: Could you share with the committee, regarding whether or not during the appearances that you've had at committee before—have you ever been compelled to say or do something from a member of political staff that you were not comfortable doing or saying?

Mr. Greg Orensak: No, not to my awareness or recollection, no.

Mr. Steven Del Duca: How about your appearance today? I'm just wondering if you have had any conversations with political staff prior to appearing today, in which they may have directed you to say or perhaps refrain from saying something?

Mr. Greg Orensak: No. I've had no direction from political staff.

Mr. Steven Del Duca: Can I ask, did anybody work with you on your opening statement for today?

Mr. Greg Orensak: I did meet with people, obviously. I don't take this lightly in terms of appearing before any legislative committee, no matter what the occasion. I personally think that would be irresponsible. So I did work with some of my staff. I did talk to some of our legal counsel. So absolutely—

Mr. Steven Del Duca: No political staff?

Mr. Greg Orensak: No.

Mr. Steven Del Duca: Thank you. Again, as you're probably aware, this committee has seen a large number of document production motions since the very beginning of the process, and I understand that particularly the Ministry of Finance has turned over about 50,000 documents, I believe, to the justice policy committee. So I anticipate that you had some involvement, oversaw some aspect with regard to those particular document request motions. I'm wondering if you can talk to us a little bit more about the processes that go into producing these kinds of documents, in terms of the time it took, the energy that it took, from the Ministry of Finance's perspective.

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Mr. Greg Orensak: Yes. I can speak to my direct involvement. As I mentioned earlier, I wasn't responsible for the overall process, but in terms of the approach that the ministry took, to the best of my understanding, it was making sure that we had correctly interpreted the motion that was passed by the committee and providing instructions to staff to search for those documents that would fall within the scope of that motion. We took some care to ensure that we documented that to the committee so that the committee was able to see what we'd done and was able to be comfortable that we'd been responsive to the particular needs of the committee itself.

Mr. Steven Del Duca: Thank you very much.

In the Auditor General's report, she mentions that at the particular time in question, the Ontario Power Authority only had about 12 days to negotiate the deal to relocate the plant to Napanee and that there were a number of challenges associated with that tight time frame. As you may know, at the same time that they were negotiating this particular deal, the estimates committee was compelling the Ministry of Energy and the OPA to release all of their correspondence related to the two relocations.

Both the Ministry of Energy and the OPA cautioned that the early release of this confidential and commercially sensitive information would jeopardize the negotiations, but the opposition was relentless in making the demand to disclose. Given the circumstances around which the negotiations were taking place, do you think that the political pressure to release the documents in question contributed to the tight timelines in negotiating a deal on that particular relocation?

Mr. Greg Orensak: It's hard, if not impossible, for me to comment on that. I'd rather not speculate, Mr. Del Duca.

Mr. Steven Del Duca: Quickly, again, we asked the former Auditor General here at committee a similar question. The response that we got from that particular individual was, "I'd be reluctant to do anything that places that sort of information into the hands of the other party, anything that would be prejudicial to the taxpayers."

He went on to say, "To put it in laymen's language, it's like in poker; you don't show the people around the table your cards."

I'm just wondering if you have any opinion or if you might agree or disagree with that particular statement around disclosing confidential and commercially sensitive information during a negotiation process, generally speaking.

Mr. Greg Orensak: I can only speak generally; I wasn't involved in the particular negotiations in question. In general terms, in the past, when doing commercial negotiations, we have undertaken to maintain commercial confidentiality. Obviously that's an obligation that we take very seriously, just like all of our obligations to counterparties or the public or the Legislature.

Mr. Steven Del Duca: You're familiar with cabinet walk-arounds, as they're commonly called?

Mr. Greg Orensak: I am familiar with what a walk-around is, yes.

Mr. Steven Del Duca: Obviously this has been a point of discussion at various times throughout this committee process. I'm wondering if you can help, from your perspective, to shed some additional light on this particular practice, this routine practice of having cabinet documents signed on what we call walk-arounds, either in the event that the House is not sitting during a constituency week or perhaps during the summer when cabinet is not sitting regularly. Could you provide some insight or could you provide us with a sense of how common this practice might be from your perspective or your experience?

Mr. Greg Orensak: We have fairly regular meetings of treasury board and cabinet, but they obviously don't meet every day—or every week, for that matter. Treasury board meets either every two weeks or every four weeks. That's what I can speak to, which is what I'm most familiar with. There are times when the need arises for urgent decision-making as a result of an unanticipated issue or a contractual commitment or something unexpected that happens. In those cases, we may be asked to facilitate decision-making outside of the regular cycle of treasury board meetings, and we undertake to identify a quorum amongst treasury board members, and they are either briefed individually or briefed as a group outside of the normally scheduled treasury board meetings to seek their approval of a particular issue that may be brought before them.

Mr. Steven Del Duca: Okay. Thanks very much. I wanted to talk a little bit about, generally speaking, new staff training that has been implemented in the accountability legislation that is forthcoming. You know, I'm sure, that there have been a number of reports released during the life of this committee—for example, two Auditor General reports; the report issued by the Information and Privacy Commissioner; and the IESO and the OPA issued a report including 18 recommendations on new siting practices for large energy infrastructure projects in the province—all of which have helped to inform the work that is taking place here at this committee.

As I'm sure you're also aware, the government has introduced new legislation that would, if passed, significantly enhance accountability. Among many initiatives, that would include, for example, amending the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act to require that all organizations and bodies captured under the act would securely preserve their records and prohibit the wilful destruction of records. This also builds on other important initiatives enacted under Premier Wynne, including staff training on record-keeping and a new directive limiting political staff involvement in commercial third-party transactions.

I'm wondering, especially given your new role—or soon-to-be new role—at government services, if I could get your feedback on how you see these particular

changes taking place. Again, relying on your experience, what are your thoughts regarding this sweeping package of reforms that are being discussed?

Mr. Greg Orenszak: I can speak to that in general terms. I should be clear and up front that in terms of my upcoming assignment, I haven't yet had any briefings from the Ministry of Government Services in terms of the work and their current files, so I can't speak to some of the specifics that may be before the Legislature, for example, that are sponsored by the Ministry of Government Services.

Again, I can speak to my public service role around ensuring accountability and transparency. That's something that we take very seriously. There are various rules, directives and training that we provide for staff in terms of their obligations and responsibilities, some of which are—training is refreshed on a regular basis, whether it comes to travel, meal and hospitality expenses. There have been changes, as you said, many of which directly impact the public service as well.

Mr. Steven Del Duca: Thanks for that answer. Again, I know we're talking about this in general, kind of high-level terms and not delving into the details, but I'm wondering from your perspective—again, because you've served for quite some time at a senior level in the civil service and also taking into account what the proposed legislation would require on these issues—if you have a sense of how either what has already taken place in the last little while or what is proposed to take place under the new legislation compares in terms of what exists in other relevant, comparable jurisdictions, be it federally or other provinces. Any sense of that from your perspective?

Mr. Greg Orenszak: Again, I can't necessarily comment on the specifics of this particular piece of legislation versus another. I think we do strive to be open and transparent, and there are good examples of that. One example that is directly within my purview or something that I do concern myself about is some of the transparency of our financial statements. Recently, the C.D. Howe Institute did comparisons across Canadian jurisdictions, including the federal government, in terms of how well various financial statements, budgets, estimates, public accounts that jurisdictions publish compare in terms of how easy it is for the public to understand them, and I was pleased to see that both Ontario and the federal government were ranked at the top in terms of how transparent those statements are.

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Those are important to us—to me—from a public policy perspective, for example. We do often look at what other jurisdictions do, as a matter of course. When we develop policy, we work at the staff level with other jurisdictions in terms of understanding how their policies work or may impact on the operations of government, and we are guided by—if I could say—continuous improvement in that regard.

Mr. Steven Del Duca: Thanks very much for that answer.

I'm going to revert back a little bit to the notion of the release of commercially sensitive or confidential information and how that might impact negotiations, how it might be best to try and avoid litigation—again, understanding that we're talking in general terms. You've worked at the Ministry of Finance for a number of years, and I think you would probably be aware of the potential damage that can be done should confidential information be released to the public concerning ongoing negotiations or, I guess, early-stage contract completion, not only for the province but also for the parties involved.

I think our government's been very careful to ensure that the information of third parties has not been compromised while making every attempt to be fair and transparent with the transactions that are currently under way. I'm wondering if you could shed some light from your perspective, from your history in the public service, on the predicament that a government—this government, or any government, for that matter—might face when pressure is applied to release documents or commercially sensitive information before a deal has materialized or an official contract has been signed, in general terms.

Mr. Greg Orenszak: I think in general terms, we are very mindful of our obligations, both around confidentiality and continuous disclosure. We are an issuer and we borrow on the open markets, for example, so we do take those obligations very seriously.

In turn, when the government is negotiating commercial contracts, it may enter into confidentiality agreements that support due diligence around a particular potential commercial transaction that require the counterparty to disclose information to us that wouldn't normally be available to their competitors, for example, and we are extremely mindful of maintaining the commercial confidentiality that's expected of us.

Mr. Steven Del Duca: Thanks very much for that answer. So regarding litigation or the risks around litigation specifically, I'm anticipating that during your time working with the government of Ontario and especially at finance, you've become familiar with the risks and costs associated with litigation as a result of breach or non-compliance with commercial contracts. You may know that when former secretary to cabinet Shelly Jamieson appeared before this committee for the second time, she confirmed this. I just want to read very quickly to you a quote from her transcript. She said:

"I would say it would be a pattern in the province of Ontario to look to avoid litigation where we can. Litigation is not a pleasant exercise. So there would be several times that things would come into Cabinet Office when they had been unresolved and it looked like we were tracking towards litigation. We might ask ourselves, is there something else we could do to avoid that situation? At that point, I saw this as the same as those other instances." That's what the former cabinet secretary said.

When David Lindsay was here, the former Deputy Minister of Energy, he also had this to say about litigation: "If you have a contract and you don't honour the contract, the party on the other side can sue you for

breach of contract and the damages would be all the benefits they were hoping to procure....”

Finally, John Kelly, who serves as counsel in the Attorney General’s office, stated, when he testified, that in his experience, after 40 years of litigating, that “if you can avoid litigation, you should. It’s a process that’s fraught with risk.”

The Chair (Mr. Shafiq Qaadri): You have 30 seconds.

Mr. Steven Del Duca: Is that consistent with your understanding and your experience—that as a government we should try to do what we can to avoid litigation?

Mr. Greg Orensak: I’m not a lawyer by training or profession; I’m an economist, so I can’t speak to specific legal matters. But I think that it’s probably fair to say that litigation is not necessarily the first choice in terms of the way to solve—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. Of course, you do realize that the witness is moving up, moving to the Ministry of Government Services.

In any case, Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Chair, and thank you, Mr. Orensak, for joining us today.

Have you heard the name “Peter Faist”?

Mr. Greg Orensak: I’ve heard it in the media, yes.

Mr. John Yakabuski: You’ve heard it in the media. Had you heard it before the media?

Mr. Greg Orensak: No.

Mr. John Yakabuski: Had you ever met Peter Faist?

Mr. Greg Orensak: No.

Mr. John Yakabuski: You had never met him before?

Mr. Greg Orensak: No.

Mr. John Yakabuski: Are you aware of the protocols surrounding the retention of government documents and the retention of records? I’m not talking about the new ones; I’m talking about how they’ve been for decades.

Mr. Greg Orensak: I’m aware of our records retention guidelines and obligations that we have as public servants, yes.

Mr. John Yakabuski: Under your knowledge of the circumstances that existed prior to the Kathleen Wynne regime, would you have considered that the wiping out of hard drives would be something that would be against the law at the time?

Mr. Greg Orensak: I’m not aware of the full circumstances. I think that it would not be my place to speculate or opine on that.

Mr. John Yakabuski: You’re a senior bureaucrat. You’re there because you’re expected to be able to think and make decisions. If someone told you, “I’m coming in to wipe out the hard drives,” would you allow that or would you question that?

Mr. Greg Orensak: If one of my staff came to me and said that, I would certainly question that.

Mr. John Yakabuski: What if the chief of staff to the Premier came in and said, “Oh, I’ve got a boyfriend of an associate. He really knows this stuff. He’s coming in to

wipe out hard drives”? What would your response be then?

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney on a point of order.

Mr. Bob Delaney: Mr. Yakabuski is trying to figure out a way of asking questions about a witness who has not appeared here, and I don’t think that asking this witness to speculate on what somebody else might say in a hypothetical situation—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. We take your point under advisement.

Just to remind the committee, hypotheticals are probably out of the scope, and obviously a witness is entitled to answer as he sees fit.

The floor is yours.

Mr. John Yakabuski: I’m asking him about what he considers his personal code of conduct. I think that every one of us, regardless of the position we hold—and I think that’s a fair comment—has within us what we would consider to be our personal code of conduct. Under your personal code of conduct, would you consider that to be acceptable: to allow someone from outside your own office, outside the public service completely, to come in and tamper with the information on computers?

Mr. Bob Delaney: Chair, I have to ask, on another point of order: Would the Chair please rule on whether or not this line of questioning is within the committee’s scope and mandate?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. The hypotheticals, as have been pointed out, are not really within the scope and not really required to be answered, but I think that our witness is quite capable of handling himself. Are there any further comments that you might have?

Mr. Bob Delaney: No.

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The Chair (Mr. Shafiq Qaadri): All right. The floor is yours, Mr. Yakabuski, but I would just advise you, in order to continue with your seven minutes that are left, that perhaps you might—

Mr. John Yakabuski: Right. If the witness chooses to answer it then the witness would choose to answer it; if he doesn’t, then I’ll have to accept that he chose not to answer it.

Mr. Greg Orensak: I can only speak to my values, and I’d like to think that my values, shared with many other folks within the public service, are to live up to the highest ethical norms that all of you expect of us.

Mr. John Yakabuski: I appreciate that, and I believe that that is the case. What I’m getting at is that the deletion of emails has been a significant part of the work of this committee, once it was made aware of what happened. When the privacy commissioner, Ms. Cavoukian, came to visit us and explained to us the scope of what had gone on, we were aghast. We were shocked. As members of the committee, we were concerned about, quite frankly, the threat that this is to our democracy, when it is something so important to the people. If they

can't trust the government to protect the records—if they cannot trust the government, then who are they to turn to?

I want to read something, if I may.

Mr. Greg Orencsak: Of course.

Mr. John Yakabuski: This is out of—I believe it's the deposition to the OPP. With respect to: "Peter Faist, a non-Ontario public service employee, used the special global administrative right of Wendy Wai to access desktop computers in the Premier's office."

They were questioning a Ms. Lauren Ramey, who I believe has appeared before this committee in the past.

"Ms. Lauren Ramey was an employee in the media office of Premier McGuinty. On the 7th of February 2013, she was approached by Ms. Alex Gair, the assistant of her supervisor Ms. Laura Miller. Laura Miller was the deputy chief of staff of communications and strategy and chief of staff to the Minister of Intergovernmental Affairs. According to Ms. Ramey, Alex Gair was accompanied by a male who was introduced as Laura Miller's boyfriend. Ms. Ramey recalled that his name was Peter Faist. She did not know who he was and did not believe at the time that he was an employee of the Ontario public service.

"According to Ms. Ramey, Peter Faist logged onto her computer and began to type something. Ms. Ramey was unaware what Peter Faist did on her computer but was told that they were getting the computers ready for the next government." She goes on, "I assume he got rid of something I don't know he didn't they said they said"—I guess it's just double printed—"they were coming in and they were going to ... get the computers prepared for the next round of staff."

Interesting.

In these offices, you must have security clearance, right? You've got an access card?

Mr. Greg Orencsak: Yes, I have an access card.

Mr. John Yakabuski: In order to get into these offices, security would have to give you a card. Right? Somebody just can't say, "Send down a card for Greg Orencsak; he's going to be coming in here a lot," I assume. No, you'd have to go and get a photo taken. You would have to be documented. You would have to be, probably, checked out in a few ways.

So, this Peter Faist guy—this faceless Faist guy; a non-member of the Ontario public service—how would he get in and out of these offices? Would somebody have to kind of shepherd him in there through the secret door?

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Mr. Bob Delaney: I, again, have a problem with a line of questioning concerning a person who has never appeared before this committee and asking a hypothetical question of a witness who said that he doesn't know him and has never met him.

The Chair (Mr. Shafiq Qaadri): The point is well taken. Mr. Yakabuski, I invite you to remain within the scope of—

Mr. John Yakabuski: Absolutely, Chair. Thank you very much.

The reason I'm asking the questions is because this is our first opportunity to speak to a senior-level bureaucrat, who would have to have clearance at the highest level. You're not some junior guy who's on a contract here; you're at the highest level.

You see, this Peter Faist has refused to speak to the OPP. We're not comfortable that he's even going to agree to come to speak to this committee. He may have disappeared; he may have gone AWOL, because nobody seems to know where he is. So I'm just trying to get a feel for the procedures about how a guy like this could slip through the cracks and come in through the back door and wipe out 24 hard drives. I'm just trying to paint myself a picture here. You being someone who obviously has access at certainly a higher level than I—I could never go into those offices. There's no way. There's no way that I'd have access. But you have that kind of access. I'm trying to determine who would be able to—hypothetically, of course, and I understand that. Could you walk a guy like—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Mr. Bob Delaney: Chair, I don't mind if he asks these questions to the actual witness, if any of the parties brings the witness in, but I don't think it's fair to ask—

Mr. John Yakabuski: Okay. I'm going to ask about me, then. Thank you, Chair.

Mr. Bob Delaney: I don't think it's fair to ask a gentleman who has had—

The Chair (Mr. Shafiq Qaadri): Thank you. Your time has stopped.

Mr. Bob Delaney: —no exposure to this individual, whoever the heck he might be, about what might hypothetically happen. I think these hypothetical—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Your point is again well taken, and for a cascade of reasons, Mr. Yakabuski, I would invite you to please be within the scope of the committee.

Mr. John Yakabuski: I appreciate that. Thank you very much.

The Chair (Mr. Shafiq Qaadri): His time starts again.

Mr. John Yakabuski: So I don't have that access, but you do. So, how could you get me in there?

Mr. Greg Orencsak: I should be very clear: I don't have access to the Premier's office, so I couldn't get you in there, Mr. Yakabuski.

Mr. John Yakabuski: Where could you? These secret places, the highest levels—I can't get into the Premier's office either.

Mr. Greg Orencsak: I have a Ministry of Finance access card—

Mr. John Yakabuski: I can't get in there.

Mr. Greg Orencsak: —that gets me into the Ministry of Finance.

Mr. John Yakabuski: I can't get in there. How could you get me in there?

Mr. Greg Orencsak: Every employee at the Ministry of Finance—

Mr. John Yakabuski: I'm not one. I'm like Peter Faist: I'm not an employee of the public service.

Mr. Greg Orencsak: If you were coming to visit me in the Ministry of Finance, I would make sure that—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. John Yakubuski: What about like after hours?

Mr. Greg Orencsak: There would be a security desk at the Ministry of Finance where you could sign in and you'd have to say who you are visiting and that the Ministry of Finance—

Mr. John Yakubuski: So I'd have to sign in?

Mr. Greg Orencsak: You'd have to sign in and at the Ministry of Finance, you would—

Mr. John Yakubuski: Would there be security tapes?

Mr. Greg Orencsak: I'm not privy to the tapes that security personnel may have, but you'd have to sign in. You'd get a visitor pass and you'd be escorted to my office. After hours, I would probably personally escort you if there weren't any other staff available to come and meet you in the lobby.

Mr. John Yakubuski: I'll see you there at 7 o'clock. Just kidding. But I thank you for the answers, because we're somewhat flummoxed over here about how all of this stuff was being—someone was able to breach what is supposed to be there to protect us and the citizens of Ontario. Somehow, someone was able to jump through all of those hoops, climb all of those hurdles—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakubuski. I'll now offer the floor to the NDP.

I'm not sure if it's my place to offer, Mr. Yakubuski, but I think members of the committee would be very pleased to escort you to any office that you so choose.

But in any case, to the NDP.

Mr. Jagmeet Singh: Thank you very much. I want you to turn your mind to—these are some questions around the treasury board.

Mr. Greg Orencsak: Sure.

Mr. Jagmeet Singh: You had indicated before that the treasury board is made up of ministers who receive requests from—whether it's a requesting ministry or whether it's—one of the examples was a requesting ministry for funds for a particular project, and then the treasury board makes a decision. Does the Premier's office ever make direct requests of the treasury board?

Mr. Greg Orencsak: The Premier's office, or Cabinet Office, which is the Premier's ministry, may come before treasury board.

Mr. Jagmeet Singh: Okay.

Mr. Greg Orencsak: In terms of a request, it's like any other ministry.

Mr. Jagmeet Singh: Right.

Mr. Greg Orencsak: In terms of spending, it has an allocation. It has a set of estimates. If there are changes to those estimates that would require treasury board approval, then that ministry would come to treasury board.

Mr. Jagmeet Singh: Okay. That's helpful. So who made the presentations in respect of—beginning with the Oakville gas plant cancellation and the costs associated with that, who appeared before treasury board to make those submissions or those requests?

Mr. Greg Orencsak: I don't have that information before me in terms of who specifically made that presentation on such and such a day. I can tell you in general terms that ministers and deputy ministers from the ministry that's making a request to treasury board or senior staff are invited to treasury board to attend and make a presentation if they so choose. We also have treasury board staff available who can summarize the request before treasury board and brief members.

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Mr. Jagmeet Singh: So, then, would you be able to provide us, with respect to both the Oakville gas plant cancellation and the Mississauga gas plant cancellation, with who appeared before the treasury board, for example, for the initial cost that was tagged at \$40 million, who made the presentations requesting that this is how much would be required from the treasury board or for the treasury board to approve? Who was that?

Mr. Greg Orencsak: Just so I understand your question, Mr. Singh, you're asking for me to go back and check who from the Ministry of Energy came and presented before treasury board?

Mr. Jagmeet Singh: That's right.

Mr. Greg Orencsak: I can undertake to do that for you.

Mr. Jagmeet Singh: Okay. That was for Oakville and for Mississauga. In your understanding, it was folks from the Ministry of Energy specifically, or was it another ministry?

Mr. Greg Orencsak: These were submissions from the Ministry of Energy, so it would have been supported by Ministry of Energy staff.

Mr. Jagmeet Singh: Okay. And are you aware if there was any other ministry or any other individuals, apart from the Ministry of Energy, that made submissions with respect to the costs around the gas plant?

Mr. Greg Orencsak: I'm only aware of submissions by the Ministry of Energy.

Mr. Jagmeet Singh: So one final request is, could you confirm if there was any other party that came before the treasury board in relation to the gas plants, both Oakville and Mississauga, who made submissions with respect to costs?

Mr. Greg Orencsak: So whether there was any other ministry that would have made a request to treasury board associated with costs of Oakville or Mississauga?

Mr. Jagmeet Singh: Right, and if it was someone that didn't fall within the definition of a ministry, could there have been anyone else that perhaps was a staff or consultant or someone that made a submission that was not within the ambit of a ministry?

Mr. Greg Orencsak: It would have had to have been a ministry. Only ministries come before treasury board.

Mr. Jagmeet Singh: Okay. I just want to turn your attention back to the record-keeping policies that you have, specifically with relation to the retention of data and more specifically retention of emails. You have a policy you briefly alluded to, something that's laid out, and there's an IT policy for that. Is that correct?

Mr. Greg Orensak: That's correct. There are IT policies, records retention policies, yes.

Mr. Jagmeet Singh: Right. And these are policies that members of your staff are aware of and are trained in. Is that correct?

Mr. Greg Orensak: That's correct. So staff have a positive obligation in terms of familiarizing themselves with the policies and procedures associated with their duties. There are certain policies and procedures which we offer training on. Some of these courses are mandatory, some of these are optional, but they are available for staff.

Mr. Jagmeet Singh: Do you have a policy around what happens if someone does—whether it's your own staff member. If your own staff member deletes an email within your own ministry or your own organization, if they do delete something, do you have a protocol or a policy that outlines or defines what they should do, or what one would do, whether it's yourself or someone else in your organization, if it turns out that a staff has deleted emails or any other data?

Mr. Greg Orensak: The policy is available in terms of records management, so staff are required to follow a records management policy, and they have information available to them as to what that policy means and how they should apply that. I think you're asking—well, I won't put words in your mouth. So if that's not sufficient, just ask me.

Mr. Jagmeet Singh: That's sufficient, yes. What were you going to say, actually?

Mr. Greg Orensak: I was going to say that if staff makes a mistake, they can always put their hand up to their manager and we can figure things out.

Mr. Jagmeet Singh: Okay. I'm going to ask you some questions now back to the gas plant costs. In the formation of a budget, did the question of gas plant costs come up in terms of the overall fiscal budget for the year?

Mr. Greg Orensak: Are you asking about a specific budget?

Mr. Jagmeet Singh: Sorry, yes. When it was relevant—in the relevant time frame of the decision to cancel the gas plants and the costing that flowed from that. Were those costs part of the analysis with respect to the budget?

Mr. Greg Orensak: I think the issue around costs and the fiscal impact of the gas plant cancellation was a topic that was discussed, that was—

Mr. Jagmeet Singh: Was it discussed in relation to a budget or just in terms of the fiscal books of the province, broadly speaking?

Mr. Greg Orensak: It was discussed in the context of the fiscal books of the province. That may have flowed into budgetary discussions. We talk about the fiscal plan day in and day out. There's no break in that.

Mr. Jagmeet Singh: Sure. That's fine. Is there a particular part of the Ministry of Finance that would have been responsible for the costing around the gas plants? Which part of the ministry would that be?

Mr. Greg Orensak: I'm not aware of anyone within the Ministry of Finance doing their own costing around the gas plant cancellation costs. The ministry would have been in receipt of risk analysis or risk reports around potential costs.

Mr. Jagmeet Singh: And who would have generated that analysis or those reports?

Mr. Greg Orensak: I think that information would have most likely come from the Ministry of Energy.

Mr. Jagmeet Singh: So with respect to the costing, the Ministry of Finance would be relying on information provided to them by the Ministry of Energy?

Mr. Greg Orensak: Yes, and that's quite common. We would rely on other ministries in terms of reporting potential costs and risks associated with their budget and their budgetary plans.

Mr. Jagmeet Singh: Okay.

Mr. Peter Tabuns: And if I could just ask, who would have been involved in these discussions of costs?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Greg Orensak: In the Ministry of Finance, we would have received reports from the Ministry of Energy, for example. What we do, what my staff does, is try to create a fairly comprehensive picture of the risks that various ministries might be tracking—there might be positive or negative risks—that could impact the fiscal plan.

Mr. Peter Tabuns: Would there have been people involved outside of your staff in these discussions?

Mr. Greg Orensak: There could have been. When it comes to various areas of government spending, we would talk to other divisions within the Ministry of Finance. It's not constrained to my staff. We have people who are more familiar with financial policy or the financial services sector. We might consult them. We have people in the Ontario Financing Authority who have certain specific expertise when it comes to commercial matters. We would talk to them.

Le Président (M. Shafiq Qaadri): Merci, monsieur Tabuns et monsieur Singh. Je passe la parole maintenant à mon collègue, M. Delaney.

Mr. Bob Delaney: Thank you, Chair. Just before we begin, I know Mr. Singh was asking a number of questions, and I'm pleased to say that most of the answers are actually in documentation turned over some time ago in response to some requests made as far back as last spring, summer and fall. So I can promise you several evenings of extremely uninteresting reading if you choose to go in and research it.

Do we have any more questions?

Interjection.

Mr. Bob Delaney: Chair, I think we have covered our ground with this particular witness. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Thank you, Mr. Orensak. I wish you well in your continued service to the people of Ontario. You're officially dismissed.

We now have a subcommittee meeting.

Interjection.

The Chair (Mr. Shafiq Qaadri): I'm sorry. We have a motion for that committee that was deferred from this a.m. Do we need the motion read again? Mr. Delaney, perhaps you might just read it to reorient us.

Mr. Bob Delaney: All right. Has everybody got the latest version here? Okay, let's just wait until you get it.

The Chair (Mr. Shafiq Qaadri): Go ahead and read the motion. Then we'll have a full discussion and—

Mr. Bob Delaney: The motion, then, reads: Pursuant to the subcommittee report dated March 5, 2013, I move that the Standing Committee on Justice Policy retain external legal counsel and that the external counsel be present during committee meetings related to the orders of the House of February 20, 2013, and March 5, 2013.

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The Chair (Mr. Shafiq Qaadri): Thank you. Yes. Mr. Delaney, your comments, and then the floor to Ms. MacLeod.

Mr. Bob Delaney: Okay. Chair, it's a motion that asks for the legal counsel that the committee discussed quite a few months ago. We kind of held off on it, but I think at this point the existence of both parallel committee proceedings and an OPP investigation perhaps make it necessary for this committee to seek outside legal counsel, and there are a couple of reasons for this.

We would like, first and foremost, to ensure the integrity of the ongoing police investigation; and secondly, ensure that the witnesses themselves are properly protected.

Another point I think is important is that legal advice on the exact and unique nature of parliamentary privilege and also the proceedings of the House is often required, and sometimes we discuss this. Part of the committee's mandate is of course to uphold procedural fairness. In a fairly long motion that he made on February 20, 2013, which, if I have to read into the record, I will, MPP Leone moved—and I'm just going to read the operative part—that “in exercising its authority throughout the committee proceedings, the committee shall adhere to the minimum standards of procedural fairness and the principles of fundamental justice as required by the Charter of Rights and Freedoms.”

I probably may have other things to say, but I think I'll stop here for the moment and hear from my colleagues.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Ms. MacLeod?

Ms. Lisa MacLeod: Actually, we concur that there is a need for this. I would ask the member opposite if he would consider deferring this for a vote until Thursday, just so that we have some time to review what has been done with Ornge. I think it's a supportable notion; I just want to make sure that we have a supportable motion.

Mr. Bob Delaney: That's a fair request.

The Chair (Mr. Shafiq Qaadri): Mr. Singh and Mr. Tabuns.

Mr. Peter Tabuns: Just to make sure this comes forward at the end of witness testimony on Thursday morning, not at the beginning.

Mr. Bob Delaney: Agreed. Totally agreed.

Mr. Jagmeet Singh: Sure, that's good.

The Chair (Mr. Shafiq Qaadri): Fair enough—sorry, Mr. Singh.

Mr. Jagmeet Singh: I just wanted to chime in on our experience at Ornge. I had the pleasure of sitting on the Ornge hearings for the past two and a half years—

The Chair (Mr. Shafiq Qaadri): Public accounts.

Mr. Jagmeet Singh: Right. They weren't only the Ornge hearings—they were, essentially. We also put forward a motion to obtain legal counsel, and while there was a benefit in a narrow scope, to be fair—and this has nothing to do with the quality of the legal counsel herself, who was fantastic and had phenomenal experience in committee hearings—

Mr. John Yakabuski: Are you available?

Mr. Jagmeet Singh: I am also available, if need be. The issue is that there are only certain witnesses that it's relevant for. It's not relevant for all witnesses. We made the mistake of having counsel present all the time, and counsel wasn't necessary all the time. There were many witnesses with whom we had absolutely no issues and no questions.

One of the things that came up was that there was a question of what a witness could say here. It turns out, just very briefly, that we have very vast powers as a committee. We have powers of compelling witnesses to come before us. An OPP investigator can't force someone to testify, unless they're testifying at a court proceeding and there can be a subpoena. But you can't say, “I need to speak with you.” You can't force someone; you can't compel them as an OPP investigator or any police officer. But the committee has the power to actually make people come before the committee; we have the power of arresting someone if they don't, through a Speaker's warrant.

The other thing that was relevant, and it may come up, is that whatever is said here in committee—there's a sort of immunity. If you testify here and you admit to a particular offence, that evidence can't be used against you in court. The purpose for that was that people already have protection. If they come to this committee and they testify, that evidence that they talk about, their testimony, won't be used against them.

Some of these things are useful. These are things that I studied in law school, so for me it wasn't as—it's important; you don't have to take my word for it, but hear other people. I think what we need to consider is, (1) which witness it is relevant for; and (2) if it's regarding criminal allegations and if it's questions around that and protecting the investigation, what witnesses can or can't say, then it would only be witnesses who might fall within that ambit. Then, finally, with respect to witnesses coming to committee and perhaps the Speaker's warrant situation, there might be some benefit with respect to that. But I think we should be very careful to narrow the use of it, just so that we're not—you might find that we have counsel appointed who are very lovely and wonderful people, but don't benefit most of the proceedings. But there are certain cases where they might benefit.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. Ms. MacLeod.

Ms. Lisa MacLeod: My request, actually, doesn't have to do with this, so perhaps we'll wait and make a decision on this before—

The Chair (Mr. Shafiq Qaadri): So motion is deferred till—yes, Mr. Delaney?

Mr. Bob Delaney: Mr. Singh is just going to have to take yes for an answer on that.

The Chair (Mr. Shafiq Qaadri): Fair enough. Any further business?

Ms. Lisa MacLeod: Yes, just quickly. I think, given the recent revelations and the interest in this committee, it would be prudent on behalf of the Legislative Assembly to allow this committee, the justice committee, to

meet in this room on Thursday rather than SCOFEA, and I'm wondering if the Chair would make arrangements, or the Clerk, to ensure that from this point forward, we meet in 151.

The Chair (Mr. Shafiq Qaadri): Thank you. It's a Chair to Chair comment and request, so we'll be happy to do that for you, Ms. MacLeod.

Ms. Lisa MacLeod: Thank you.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Seeing none, the committee is now officially adjourned.

The committee adjourned at 1626.

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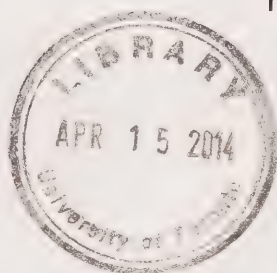
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 3 April 2014

Jeudi 3 avril 2014

The committee met at 0830 in room 151.

MEMBERS' PRIVILEGES

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, M. André Duval, représentant la Police provinciale de l'Ontario. Yes?

Mr. Steven Del Duca: Sorry, Mr. Chair. I was under the impression we were going to deal with this particular motion regarding legal counsel that we discussed previously at—

Le Président (M. Shafiq Qaadri): Non. Après notre conférence, monsieur Del Duca.

Mr. Steven Del Duca: Why not before?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. That was decided previously.

Mr. Steven Del Duca: That was decided previously by?

The Chair (Mr. Shafiq Qaadri): At the last meeting.

Mr. Steven Del Duca: The specific timing of dealing with the counsel was decided previously, at subcommittee?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Steven Del Duca: Okay.

Ms. Lisa MacLeod: Yes, but nice try.

Mr. Steven Del Duca: I wasn't here for subcommittee. It's always a good morning when I can get a kudos from Lisa.

MR. ANDRÉ DUVAL

The Chair (Mr. Shafiq Qaadri): We would now invite Monsieur Duval to please be sworn in by our Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. André Duval: I do so swear.

Le Président (M. Shafiq Qaadri): Merci, monsieur Duval. Vous avez cinq minutes pour votre présentation introductoire. S'il vous plaît, commencez maintenant.

Mr. André Duval: Mr. Chairperson and committee members, my name is André Duval. I'm a detective constable with the Ontario Provincial Police anti-rackets branch.

Where I can, I will update you on my role in this on-going OPP investigation into allegations that records of the government related to the cancellation of the construction of two gas-fired power plants were illegally deleted.

As now-retired OPP Commissioner Lewis has previously testified, I want to ensure clarity on the nature of the OPP investigation. The OPP anti-rackets branch is not investigating the cancellation of the two power plants, just the alleged deletion of records.

I will answer questions you may have on the specifics of any evidence as they are noted in the information to obtain, or ITO, that has recently been made public. This information to obtain represents a full, frank and fair disclosure of the evidence collected so far in this investigation.

But please understand that if you require me to answer questions on specific evidence, I could potentially prejudice the prosecution of any criminal offences that may result from this investigation. There is a significant public interest in preserving the integrity of a criminal investigation, and in ensuring that any persons who have committed offences are ultimately held accountable for their actions before a court of competent jurisdiction. Until that happens, it would be unfair and reckless for me to speculate on the outcome of this investigation or any charges that may be laid. The investigation will go where the evidence leads it.

The speed, flow and direction of the investigation are determined by the case manager. Any police investigation must respect the Charter of Rights and Freedoms of every person, including protection against unreasonable search and seizure, the right to legal counsel and the right to remain silent.

Let me define my role in the OPP investigation into the alleged illegal deletion of records. My role is specific and also limited in scope. As part of the OPP investigative team assigned to this particular investigation, my job is to write information-to-obtain judicial orders like this search warrant.

I take information provided to me by other members of the investigative team to support the ITO. As previously noted, the ITO requires full, frank and fair disclosure of the investigation to obtain judicial authorization to search places and seize evidentiary material. In that role, I do not direct the investigation; nor do I determine the investigative strategy. The investigation is dir-

ected by the case manager, a detective inspector from the anti-rackets branch.

The Chair (Mr. Shafiq Qaadri): Just pardon me for a moment, Mr. Duval. We welcome all members of the press. I'd just respectfully ask you not to actually film the papers that are on the desk. Those are considered confidential.

Please continue.

Mr. André Duval: The case manager has assigned a team of investigators from the anti-rackets branch and other areas of the OPP to conduct this investigation. OPP investigators have conducted interviews with more than 20 people during the course of this investigation to date, which has focused on the greater Toronto area and Queen's Park. This isn't a final number by any means, nor is it a complete list of who may be interviewed. Again, the case manager determines the speed, flow and direction of the investigation. It is my understanding, however, that the OPP has received co-operation from senior government officials in this matter.

As you are probably aware, the OPP executed a search warrant on February 19, 2014, in which 24 computer workstation hard drives were seized. OPP computer forensic experts from the technological crime unit are examining these exhibits for items of evidentiary value. This forensic analysis is a lengthy and complex process, but a thorough review of these exhibits is essential for a proper and complete investigation.

Again, it would be unfair and reckless for me to speculate on when the investigation will be finished or whether charges will be laid. It is our practice that investigators take the time they need to follow the evidence to its logical conclusion and then take appropriate action. With your consideration of my concern respecting the integrity of the investigation and my specific role in this investigation, I will answer questions you may have.

En considérant ma préoccupation sur l'importance de sauvegarder l'intégrité de l'enquête et mon rôle spécifique dans le cadre de cette enquête, je suis à votre disposition pour répondre à vos questions. Merci. Thank you.

Le Président (M. Shafiq Qaadri): Merci, monsieur Duval, pour vos remarques introductoires. Maintenant je passe la parole au NPD. Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Mr. Duval, for being here with us this morning.

I just want to take a second to inform the Chair that at the end of this testimony, I'll be putting forward a resolution asking for the report of the cyber security branch's investigation that they did on this matter, the OPS cyber security branch.

The Chair (Mr. Shafiq Qaadri): You're certainly welcome to do so, Mr. Tabuns.

Mr. Peter Tabuns: Mr. Duval, the warrant indicated that the OPP had had reason to believe that David Livingston committed a breach of trust. Is the investigation limited to David Livingston, or can it expand?

Mr. André Duval: For now, I can tell you that, based on the information to obtain that I produced, it's centred

on the actions of Mr. David Livingston only. We follow the evidence. We follow the information that the investigation produces. If there are more people down the road who are involved in other criminal offences, these leads will be followed and investigated to the fullest.

Mr. Peter Tabuns: Okay. Have more warrants been executed than this?

Mr. André Duval: No.

Mr. Peter Tabuns: Do you expect to be seeking more warrants?

Mr. André Duval: That's a decision that the case manager and the leading investigator will make. For now, I am not aware of any more search warrants being produced.

Mr. Peter Tabuns: Okay. To your understanding, what is the Ontario public service cyber security branch? You cite them a number of times in your warrant.

Mr. André Duval: This is a section of the Ontario public service that basically deals with any issues with the employees of the Ontario public service. I was told that sometimes, if there is a complaint about harassment or computers being misused within the Ontario government, they will conduct an investigation on those specific employees.

Mr. Peter Tabuns: How did you become aware of the investigation conducted by the cyber security branch?

Mr. André Duval: This was upon the request of the OPP. The OPP requested that the cyber security branch conduct some form of examination.

Mr. Peter Tabuns: Can you tell us about the investigation conducted by Shawn Truax and the cyber security branch?

Mr. André Duval: The OPP, as I mentioned in the information to obtain—I assume most of you have read the document.

Mr. Peter Tabuns: Yes.

Mr. André Duval: I might refer to it once in a while.

The OPP requested some very specific information from the cyber security branch. We were made aware that there were 52 workstation hard drives in the premier's office. The first thing we asked the cyber security branch was if they were able to determine, among those 52 workstation hard drives, how many were accessed by the username of Wendy Wai—and the username was "waiwe"—between February 6, 2013 and March 20, 2013. The reason to specify that exact timeline is that we know, from this investigation, that this is the timeline when that password was active. This is the first thing we asked of the cyber security branch, and the result from their examination was that 24 out of 52 workstation hard drives had been accessed by that username within that time frame.

Mr. Peter Tabuns: Did they investigate beyond the request that you made to them?

Mr. André Duval: The next thing we asked from the cyber security branch was if they were able to determine dates and times when those 24 workstations were accessed. They replied to us that—if you allow me, Mr. Tabuns, I would like to provide you with the exact loca-

tion in the information. If you go to line 1,200, it specifies that they were able to determine dates and times for four work stations. It is page 23, and you'll see there are numbers 1 to 4. They were able to determine for four workstation hard drives the dates and times, so four out of the 24.

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Mr. Peter Tabuns: For the other 20, they were not able to determine date of access?

Mr. André Duval: They were not able to at this time. Again, I'm far from being a computer expert myself and I have to rely on what the cyber security branch told us. It's not because this data was deleted; it's just that it concerns the Windows operating system. As new logons were made on each work station, the oldest logon is simply deleted. That's just because of the Windows operating system.

Mr. Peter Tabuns: So it may be difficult to find out exactly when the other computers were accessed. It may not be impossible, but it could be very difficult.

Mr. André Duval: This will be part of the OPP forensic examination of those 24 hard drives.

Mr. Peter Tabuns: At this point, a determination that the computers were only accessed on that limited number of dates reflects what you were able to find in the computers, not a definitive statement as to when the access was made. Is that correct?

Mr. André Duval: That's correct.

Mr. Peter Tabuns: Okay. The cyber security branch took custody of a number of the drives on October 8. Do you know why they took custody? What impelled them to? What directed them to do this?

Mr. André Duval: This was basically a request from the OPP.

Mr. Peter Tabuns: Ah, okay. Were you aware of any other report or findings made by the cyber security branch in this matter?

Mr. André Duval: I'm only aware of one that was produced by the cyber security branch.

Mr. Peter Tabuns: Okay. Thank you. My questions go to my colleague Mr. Singh.

Mr. Jagmeet Singh: Good morning, sir.

Mr. André Duval: Good morning.

Mr. Jagmeet Singh: How many interviews were conducted by the OPP thus far with individuals who had some information regarding this matter?

Mr. André Duval: I can only tell you how many I have relied on to produce this document, and I could refer you to—let me just make sure I get the right table here—appendix D of the information to obtain. I can go down the list. Or do you just want a number?

Mr. Jagmeet Singh: Are you aware roughly of how many there are?

Mr. André Duval: Well, about 20 people were interviewed during the course of the investigation.

Mr. Jagmeet Singh: And this is to form the basis for the ITO, or this is subsequent to the ITO?

Mr. André Duval: No, this is before the ITO was produced. It's part of the investigation. It's a normal process.

Mr. Jagmeet Singh: Okay. After the ITO and after the search warrant was executed, have there been any other interviews now conducted?

Mr. André Duval: Not to my knowledge.

Mr. Jagmeet Singh: Where were these interviews conducted?

Mr. André Duval: I was not part of those interviews. They were conducted by other investigators. But to my knowledge, they were in Toronto and at Queen's Park.

Mr. Jagmeet Singh: In Queen's Park?

Mr. André Duval: Yes.

Mr. Jagmeet Singh: Do you know if they were conducted during regular business hours, 9 to 5, during the day? Or would they have been done after hours, in the evening?

Mr. André Duval: I believe the majority of them—I have to remember the dates and times, but they were conducted between business hours.

Mr. Jagmeet Singh: Business hours?

Mr. André Duval: Yes.

Mr. Jagmeet Singh: Okay. They were done at Queen's Park, during business hours. Was there a facility, like an office, that was provided to investigators where they would conduct the interviews? Or was it just at the desk of—

Mr. André Duval: I think there were different locations. Sometimes we would be in the office of that specific individual and sometimes there would be a room reserved for the interview, depending on who it was.

Mr. Jagmeet Singh: Okay, that's fair. Who coordinated setting up a room for you to have the interview?

Mr. André Duval: I don't know.

Mr. Jagmeet Singh: If there is anything in addition to the ITO, would you be able to provide a list of folks that have been interviewed?

Mr. André Duval: I would venture to say that in appendix D, the list you have, except maybe for very few individuals, is pretty much a complete list of the people we interviewed so far.

Mr. Jagmeet Singh: Okay.

Mr. André Duval: Just for your own benefit, these people provided, in my opinion, the best evidence so far. That's why other people were not included on the list.

Mr. Jagmeet Singh: I understand. Are you able to indicate how many times they were interviewed? Was it one time or were there multiple times?

Mr. André Duval: Some individuals were interviewed twice.

Mr. Jagmeet Singh: Okay. Can you provide a list of anyone—or first of all, did anyone refuse to provide an interview from Queen's Park?

Mr. André Duval: To my knowledge, some people refused to provide a statement. Mr. David Livingston declined to speak with us, Ms. Laura Miller declined to speak with us, Mr. Peter Faist declined to speak with the investigators, and Ms. Wendy Wai declined to speak with the investigators at this time.

Obviously, a word of caution: In my experience, sometimes people change their mind as the investigation

is ongoing, but as far as I know, as of today, these people have declined.

Mr. Jagmeet Singh: Okay. Is there anyone else in addition to those four people who declined to provide an interview?

Mr. André Duval: Not to my knowledge.

Mr. Jagmeet Singh: Okay. In order to reach out to these folks, the people you interviewed, what was the process to do that? How did you reach out to them? Did you send them a letter, was it a phone call, did you show up?

Mr. André Duval: Again, I refer to my opening statement. As the affiant, my role is very specific in this investigation: It's to write search warrants. I was not part of the process of how these people were contacted. In my experience, sometimes it's a phone call, sometimes it's—on most occasions, it's just a phone call.

Mr. Jagmeet Singh: Are you aware of what criteria were used and why the investigators decided to speak to the particular people who are in appendix D; why they chose those folks?

Mr. André Duval: I would say that first we received a complaint through the commissioner's office, and based on that, a list of individuals was produced. We always follow the evidence, so as we go down the list, other people who we believe could provide some valuable information are added to that list. These people would be addressed, saying that there is an ongoing OPP investigation—I guess this was public knowledge; it was nothing new—and they would be asked for a statement, without any further details.

Mr. Jagmeet Singh: Okay. I'm just going to give you a little bit of a summary of some things, and let me know if this is accurate.

As of now, there is a criminal search warrant that is executed. You were the affiant on the information to obtain this search warrant and, right now, the criminal allegation that is being investigated is a breach of trust.

Mr. André Duval: That is correct.

Mr. Jagmeet Singh: Right now, the breach of trust is specifically in relation to David Livingston, who was the chief of staff for the Liberal Premier of Ontario?

Mr. André Duval: That is correct.

Mr. Jagmeet Singh: The previous Premier.

Mr. André Duval: The former Premier.

Mr. Jagmeet Singh: Have you considered section 430 of the Criminal Code, which is "Mischief," and specifically related to "Mischief in relation to data"?

"(1.1) Everyone commits mischief who wilfully

"(a) destroys or alters data;

"(b) renders data meaningless, useless or ineffective;

"(c) obstructs, interrupts or interferes with the lawful use of data; or

"(d) obstructs, interrupts or interferes with any person in the lawful use of data or denies access to data to any person who is entitled to access thereto."

Have you considered, instead of the breach of trust element, which you've focused your investigation on, also including this as grounds, in light of the fact that

data have been allegedly deleted and destroyed, that it could make out the offence of mischief in relation to data? Has that entered your discussions or your consideration?

Mr. André Duval: It did. Obviously, we have to consider any criminal offence. As of today, 3 April, 2014, based on the evidence that we have, the offence of breach of trust, I felt, was the best offence so far. As the investigation is ongoing and we're still following the evidence, we're still following leads, we're hoping to get more witnesses. As I said, there's a potential that other criminal offences might be considered in the future, but I'm not prepared today to say which one it is because it's ongoing.

Mr. Jagmeet Singh: That's fair. It's fair that you've considered it and at this point in time you can't say one way or the other, and I appreciate that.

I'm just going to turn your mind back to the interviews. In the course of the interviews, when you were investigating and looking into information surrounding the deletions, in light of pursuing an investigation around the breach of trust offence, did the issue of Ornge ever spill into this? I know the OPP is also investigating Ornge. In the midst of this investigation around these deletions, did Ornge come up in your investigation at all?

Mr. Bob Delaney: Chair, on a point of order on that one.

The Chair (Mr. Shafiq Qaadri): Point of order, Mr. Delaney.

Mr. Bob Delaney: Mr. Singh will have to ask that question in a different committee. That matter is not before this committee.

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The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Your point is well taken. Mr. Singh, I would respectfully request you to please return to the focus and mandate of this committee.

Mr. Jagmeet Singh: I would respectfully disagree. It's a discussion regarding allegations of a criminal offence, and an investigation. Comments made around Ornge could be insightful into the nature of the discussion and the nature of the interview regarding the deletion of emails. It's simply just—

The Chair (Mr. Shafiq Qaadri): Mr. Singh, it's not actually a court of law. This committee and the Chair supersede that. I'd ask you to please return to the focus of the committee. Remarks referring to Ornge are out. Thank you.

Mr. Jagmeet Singh: I will note my disagreement with what you are saying and continue.

Sir, in the course of your investigation, were there grounds that came up in terms of a criminal investigation and the laying of criminal charges—were there other areas, or other information that was provided to you, that could form the basis for other criminal offences outside of the scope of what you started with, and that may require another search warrant or another criminal allegation?

Mr. André Duval: As of today, no. This is the evidence we have. I think the information to obtain is quite detailed on the evidence we have. As of today, I would say no.

Mr. Jagmeet Singh: Okay, thank you. Are you aware of when Peter Faist's and Wendy Wai's access was revoked—an exact date or a rough approximation of the date?

Mr. André Duval: I do, and this is based on witness interviews. We know that what we will call the special global administrative password that Ms. Wai was assigned was probably given to her on the 4th of February, 2013, and it was revoked on the 20th of March, 2013.

Mr. Jagmeet Singh: And for Mr. Faist, was that also the case? Your understanding is that his access ended on the 20th as well?

Mr. André Duval: What I can tell you is that this password assigned to Ms. Wai was valid during that time. When it was provided to Mr. Faist and when he decided not to use it anymore—I don't have that information right now.

Mr. Jagmeet Singh: Sure. Do you know why, or were you provided with any reasons why, this pass was revoked on the 20th? Was there any reason provided by any of the people that you interviewed?

Mr. André Duval: I believe that Ms. Wai was not part of that Premier's office at the time, on the 20th of March. That's why the special admin password was removed.

Mr. Jagmeet Singh: Okay. To date, have any of your investigators been able to speak with or meet with Mr. Faist, or did he provide his denial or—the fact that he did not want to speak with investigators—was it provided to you by another means or did you actually speak to him face to face and have that communicated to you?

Mr. André Duval: I know that the lead investigator did communicate with Mr. Faist to see if he was prepared to provide an interview, and he politely declined.

Mr. Jagmeet Singh: Okay. Would members of your team be able to provide contact information to the Clerk of this committee in order for us to make contact with Mr. Faist?

Mr. André Duval: If I'm aware of that?

Mr. Jagmeet Singh: Yes, if you're aware of it.

Mr. André Duval: No, I'm not.

Mr. Jagmeet Singh: No, are you able to? I'm asking, or requesting, if you are able to provide that contact information to the Clerk of this committee—if there is any additional contact information that you are aware of, that the Clerk is not—so that the Clerk may be able to make contact with Mr. Faist.

Mr. André Duval: I'm sure that could be arranged.

Mr. Jagmeet Singh: Okay. Thank you. Are you able to confirm one way or another—and if you're not able to, that's fine—whether or not Mr. Faist did not return after February 7? Is there any way to confirm that he did not come to the office after February 7? Or you're not able to say what dates he was there, exactly?

Mr. André Duval: I cannot confirm, after the 7th, when he returned to the office.

Mr. Jagmeet Singh: Okay. I'm going to turn your attention to paragraph 1,555.

Ms. Lisa MacLeod: What was that again—1,155?

Mr. Jagmeet Singh: One-five-five-five. The police believe that 24 computers were accessed between the 6th of February and March 20. Why do you believe that there were only 24 computers? What are your grounds for that belief?

I'm going to read further. The paragraph doesn't access what was possible, but it indicates that: "I have reasonable grounds to believe that a forensic examination of the aforementioned 24 workstation hard drives will confirm that the special global administrative right assigned to Wendy Wai was used to access the 24 desktop computers of the Premier's office between the 6th of February 2013 and the 20th of March 2013."

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Jagmeet Singh: I highlight the fact that you have grounds to believe and that this will confirm that. What specifically gives you the belief that they were accessed between those dates?

Mr. André Duval: First of all, as I mentioned earlier this morning, the OPP had asked the cyber security branch to verify, of those 52 workstation hard drives within the Premier's office, how many were accessed for that username. We were told there were 24 between that timeline of the 6th of February and the 20th of March 2013.

We have two witnesses, two individuals, who worked in the Premier's office—Ms. Lauren Ramey and Mr. Jason Lagerquist—who witnessed—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. I pass the floor now to the government side, to Mr. Del Duca.

Before I do so, I'd just like to inform the committee members that the Clerk has received communication from Mr. Faist's lawyer, so there is now a contact route established there. In any case, just to let you know.

Mr. Del Duca, the floor is yours.

Mr. Steven Del Duca: Good morning, Constable Duval.

Mr. André Duval: Good morning.

Mr. Steven Del Duca: Before I get started regarding some of the questions that I wanted to ask this morning, I did want to make sure that I put some other stuff on the record. I'm sure you are probably aware of most of this, but I think it's important to make sure, in terms of providing some context.

This particular committee has been sitting for just about a year now—around a year now. Some of what has occurred at the committee thus far, since it began, might provide you with some insight on the work that has been taking place here at the committee regarding getting to the bottom of the issue that we are actually tasked with and the mandate that we have.

To date, this committee has been provided 391,707 documents, including 30,000 documents from the Pre-

mier's office. We have re-struck and expanded the mandate of the committee itself. We've heard from 85 witnesses. There have been 36 motions for government documents that have passed and have been complied with. The current Premier of Ontario has appeared at this committee twice. The former Premier has appeared at this committee twice. The Minister of Energy has appeared twice. Our government has accepted the costs outlined in two reports generated by the Auditor General. As we sit through, at this particular moment, what I believe is about our 127th hour of this committee, we welcome you as our 86th witness.

I understand, and you did mention this at the outset in your opening remarks, that you are limited or constrained with respect to what you can discuss with the committee during an ongoing investigation. I know I speak for everyone on the government side when I say that none of us wants to do anything to jeopardize an ongoing investigation. I have confidence that the members opposite—as we've seen so far, for the most part—would also have that same degree of respect for not doing anything to jeopardize or put at risk an ongoing investigation—

Interjection.

The Chair (Mr. Shafiq Qaadri): On a point of order, Mr. Yakabuski.

Mr. John Yakabuski: With all due respect to Mr. Del Duca, the detective has come here to speak to the committee and answer what questions he can with regard to the investigation that he is currently conducting. I don't think we need a blow-by-blow description of the wonderful things that Mr. Del Duca wants to talk about—how hard the government has worked to try to clear the air on this. We all know that's not the case. Why don't we ask the detective questions that are pertinent to his part in this investigation?

The Chair (Mr. Shafiq Qaadri): We thank you for your remarks, Mr. Yakabuski. I'm sure you've inspired Mr. Del Duca.

Go ahead, please.

Mr. Steven Del Duca: "Inspired" is not the word, Mr. Chair.

Though I was interrupted, and I'd like to go back over what I just said a second ago to make sure it is clearly understood, I will not do that. I don't think it's necessary.

With respect to the ITO—which as you mentioned, I believe, everyone here on the committee probably has a copy of, or should have a copy of—under section 12, you specifically cite a series of reasons with respect to why you thought that it would be necessary or advisable to keep all documents in the custody of the courts. I want to quote just a few sections here.

Paragraph 2140 reads, "I believe that potential witnesses might be reluctant to provide information to police due to the media attention and the sensitive political nature of the investigation."

Paragraph 2145 reads, "This investigation is ongoing and I believe that the disclosure of this information would impede police investigators from following viable leads, identifying new witnesses and interviewing them."

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Paragraph 2160 reads: "The role of other persons, involved in the attribution of a special global administration right ... might have an impact on their professional profiles. The majority of the individuals are active employees of the Ontario public service and the disclosure of their identity could potentially have an adverse impact on their current employment and their personal lives."

Finally, paragraph 2165 reads: "I believe it is important in this instance to protect the integrity of this police investigation." This paragraph finishes with, "For these reasons, I am requesting a sealing order be granted. This sealing order may only be required during the ongoing police investigation so as not to jeopardize the investigation and preserve the administration of justice."

So if I can ask, what do you believe has been achieved by releasing these documents, and are the concerns that you listed, that I just read, in section 12 of the ITO still concerns you have as you sit here with the committee today?

Mr. André Duval: I would answer yes, it's still a concern. I guess, as an investigator, we have a tendency to keep the investigations close to us. It's not because we don't want the public to be aware of it; we just want to make sure that the investigation is complete and conducted in a timely fashion.

Yes, of course, the disclosure of the information to obtain was a concern for me in the sense that it's always a concern that future potential witnesses or other people of interest who could be identified as the investigation continues—if their names would be published or known to the media, would those individuals decide to cooperate with us or not? It's always a concern.

However, as I've said before, we will follow the evidence, we will follow the information that we have, and we will contact anybody who we feel can provide valuable information to this investigation.

Mr. Steven Del Duca: Thank you. I'm wondering if the committee could hear your thoughts, generally speaking, regarding the OPP's relationship with government and with politicians, sort of in a general sense, and the need for independence in circumstances such as this. I'm wondering if you can shed some light, from your professional background, with respect to where you see that line being drawn.

Mr. André Duval: As I said in my opening statement, we had good co-operation from the government officials. It's never been an issue. I believe that everybody over here today acknowledges that the OPP has to remain independent, impartial from any political party, and I think this has been achieved so far. I am confident that our group of investigators will lead this investigation properly and we will get to the bottom of it.

Mr. Steven Del Duca: I'm guessing you probably do know that former OPP Commissioner Chris Lewis testified at this committee a few weeks ago, and from my recollection, he agreed or he suggested that appearing in a legislative committee while an investigation is actually ongoing is out of the ordinary. I want to quote from his

testimony: “This is a rare case ... that I would testify ... during an ongoing ... investigation.... It’s a very difficult situation for us because it runs a very high risk that it’s going to hurt the potential co-operation of other witnesses....”

I’m just wondering if you can perhaps reflect on what former Commissioner Lewis said.

Mr. André Duval: I’ve been an officer for 17 years. It is an unusual request for a detective or an investigator to testify on the evidence that we’ve uncovered as we’re doing the investigation. It is very unusual.

Mr. Steven Del Duca: Have you ever appeared at a legislative committee yourself regarding an ongoing matter while an investigation is ongoing?

Mr. André Duval: No. It’s the first time.

Mr. Steven Del Duca: When the ITO was originally made public, Premier Kathleen Wynne responded by saying—and I think it is important to get this on the record here today at committee. She responded by saying that when she learned of the allegations against the former Premier’s former chief of staff she was disturbed and she recognized that this was not the way a government should operate nor the way a Premier’s office should conduct itself. She affirmed that this is not the way her office operates and that the individual currently under investigation does not work in her office or in her government. To your knowledge, is this true?

Mr. André Duval: That’s correct.

Mr. Steven Del Duca: Premier Wynne was also fairly clear or quite clear about having confirmed with OPP investigators that you have been working with a federal crown attorney from the Public Prosecution Service of Canada and that the investigation has been completely independent. Can you also confirm this is true?

Mr. André Duval: That’s correct.

Mr. Steven Del Duca: The opposition is continuing to press on regardless of what you said a second ago, that both of these statements are true, and have made a number of serious allegations, claiming at various times—for example, March 27, 2014, from the Ontario PC caucus website, “We know that since this has happened during her time in the Premier’s office, she oversaw and possibly ordered the destruction of documents during the cover-up.”

There are allegations of serious criminal activity in the current Premier’s office, again allegations emanating from opposition caucuses, opposition members: “There are serious allegations of criminal activity in the Premier’s office.” Implicit—in fact, not even implicit; explicit—in the PC references are the Progressive Conservative references regarding the current Premier’s office, including that the OPP and the anti-rackets squad are in fact investigating Premier Wynne. Are these conclusions that are in any way, shape or form reached in the ITO?

Mr. André Duval: No.

Mr. Steven Del Duca: To be clear, if an individual’s name is listed in this ITO, does that necessarily mean that they have committed a crime or that they have in any way engaged in any wrongdoing?

Mr. André Duval: No.

Mr. Steven Del Duca: I noticed, when reviewing the ITO and looking at the list of names, that in fact even members of the PC caucus and the NDP caucus are listed in the ITO. Just out of curiosity, why are their names listed in the ITO?

Mr. André Duval: Some of them were witnesses for this police investigation.

Mr. Steven Del Duca: Thank you very much. Regarding the specific area or the specific topic of co-operation—as the investigation is unfolding—from the government, I also want to refer back again to the testimony we heard from Chris Lewis when he appeared at committee. He confirmed that—and you’ve said this today on a number of occasions—there’s been good co-operation from senior government staff. Mr. Lewis said the following when he was here: “I am told by our investigators that the OPP is receiving good co-operation from senior government officials in this manner.” He said there was full co-operation.

He confirmed that he’s not aware of any interference from government and that he would have been made aware had any interference occurred. He also confirmed that the OPP investigation has not seen any roadblocks and no interference, and again that there has been full co-operation. Is this consistent with your experience?

Mr. André Duval: To my knowledge, it is.

Mr. Steven Del Duca: Again, to your knowledge, have there been any roadblocks which have prevented the investigators assigned from doing their jobs?

Mr. André Duval: To my knowledge, no.

Mr. Steven Del Duca: Can you confirm today whether or not your office has had any interference from any Liberal member or staff, I should say?

Mr. André Duval: To my knowledge, no.

Mr. Steven Del Duca: Again, to your knowledge, has there been any interference from other members of this Legislature while this investigation has been ongoing?

Mr. André Duval: To my knowledge, no.

Mr. Steven Del Duca: Thank you for confirming all of that.

I don’t want to delve into speculation in any way or to get into the specifics, but more or less from the standpoint of providing clarity here at the committee today, I want to make sure you understand—and I’m sure you do, but I just want to make sure it’s clear—the mandate of the committee, and the mandate of this committee is a review of the matter of the Speaker’s finding of a prima facie case of privilege with respect to the production of documents by the Minister of Energy and the Ontario Power Authority to the Standing Committee on Estimates and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

Reading from an excerpt from the ITO itself under paragraph 1805, it reads, “In September 2011, a provincial election campaign began and the Liberal Party of

Ontario, as did the other parties, promised to cancel the construction of the plant in Mississauga if elected.”

I’m just wondering what would have led those involved with the investigation to believe that alongside the Liberal Party, the other two parties, the Ontario NDP and Ontario PCs, would have cancelled the plant in Mississauga had they been elected?

Mr. André Duval: If I remember correctly, this was coming from a newspaper article that we read during the investigation.

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Mr. Steven Del Duca: Thanks very much. Is there anything else you’d like to add at this time on this round of questioning?

Mr. André Duval: No.

Mr. Steven Del Duca: Thank you very much.

The Chair (Mr. Shafiq Qaadri): The government cedes its time?

Mr. Bob Delaney: Yes.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. Just before I offer the floor to the PC side, we’re just debating over here whether we’ll adopt parliamentary procedure that if cellphones go off, we actually seize them. So if you might just shut them off; that might be advisable.

Ms. MacLeod.

Ms. Lisa MacLeod: Thank you very much, Constable Duval, for coming in at the request of the New Democrats. I appreciate you doing this. I understand the difficulty that you have in answering some of our questions. I’ll ask you some questions today, obviously. But I think the best venue for this is probably a closed meeting with the assembly people who are here, so I think at the end of this I’ll ask for an invitation back, to go in camera with the rest of the committee.

I do have a couple of questions that I’ll start with, based on my observations and some of the questions that my colleagues brought to you.

What I’m unclear on is—and perhaps you can clear this up—is it possible that Peter Faist could have accessed the remaining 20 computers up until March 20?

Mr. André Duval: It is possible.

Ms. Lisa MacLeod: It is possible that he could have accessed them. Okay. That’s important to me, because it states that the 24 desktop computers in the Premier’s office were accessed between February 6 and March 20, 2013. Can you just again confirm to us how you know that information?

Mr. André Duval: We know for sure, from the examination that the cyber security branch did on our behalf, that 24 workstation hard drives from the Premier’s office were accessed with the user name of Wendy Wai.

We know for sure that two workstation hard drives among those 24—one belonged to Ms. Lauren Ramey and the other one to Mr. Jason Lagerquist. They were employees, staff at the Premier’s office. These two individuals witnessed Mr. Peter Faist accessing their computers. The investigation revealed that during the time

Mr. Faist was there, the user name of Ms. Wai was used to gain access to those two computers.

Based on that, knowing that Mr. Faist used the user-name of Ms. Wai to access the computers of Ms. Lauren Ramey and Mr. Jason Lagerquist, I believe that the same process was used for the remaining 22 hard drives.

Ms. Lisa MacLeod: You cannot confirm that this all happened in the middle of February. It could have extended possibly to March 20.

Mr. André Duval: I don’t know that right now.

Ms. Lisa MacLeod: Yes, but it’s possible.

Mr. André Duval: It is possible.

Ms. Lisa MacLeod: Okay. I think that’s very critical for the work of this committee. Your investigation will take it where it goes.

My next question is, in the ITO, it states that on March 19, the deputy director of human resources in the Premier’s office, Emily—and I apologize to her if I butcher her name—Marangoni advised the manager of information technology to remove the special administrative password rights of Wendy Wai.

The question that I think is logical in the public’s mind is—this individual was working for the Premier, and there had been a change in the transition period. Is it possible that someone in the current Premier’s office would have known about the special password and the administrative access that Wendy Wai would have had?

Mr. André Duval: I don’t have that information at this time.

Ms. Lisa MacLeod: Okay. It just seems to me there would have been that transition.

I want to talk about something that is on page 30, and it’s stated a few times throughout the ITO. It’s of particular interest to me, and it is the link to the Dell computer program that seems to have been accessed on both of the desktops and possibly others. I believe you say you “have reasonable grounds to believe that the forensic examination will reveal if the Dell tool used by Peter Faist”—I’m not sure how you say his name—“on the work stations of Lauren Ramey and Jason Lagerquist was also downloaded on the remaining 22 work station hard drives. I believe it will also reveal the function of the Dell tool and why it was used on the work stations of Lauren Ramey and Jason Lagerquist, and any of the other 22 work station hard drives it is located on.”

Toward the bottom of page 30, at 1575 or just a little bit after that, “The deleted files or file fragments may exist for an extended period of time on the computer system, due to the design of Microsoft Windows. The files that have been deleted by the user are not physically erased. Rather, the operating system marks the area of the storage disk where the file was stored as available to be reused in the future.”

Then you go on, further down on page 31: “The Dell tool used on the work stations of Lauren Ramey and Jason Lagerquist might fit that description.”

I’m wondering if you can enlighten not only the committee but also the people who are watching this committee as to what this Dell tool really means, because

many of us are not computer technicians. What was the purpose of this Dell tool? What was the name of this Dell tool? Can you state for the record where one would find this Dell tool?

Mr. André Duval: The reason we know this is because the workstation hard drives of Lauren Ramey and Jason Lagerquist were examined by Mr. Rolf Gitt. Mr. Gitt is a senior technician for the information technology service, and this was prior to the OPP getting involved in this investigation. It was, in fact, on the 14th of February, 2013, so it's about seven days after those two computers were accessed by Mr. Faist. Mr. Gitt noticed that this link to the company Dell was downloaded on both workstation hard drives. I can tell you that investigators have contacted the company Dell, and there is an ongoing investigation on this. We are looking into it. The function of that Dell software, so far, is not known. We're hoping that with the forensic examination that the OPP is doing right now, we're going to know exactly what that software was doing. That's pretty much as much as I can tell you right now.

Ms. Lisa MacLeod: Who would have had administrative access to that? Who would have registered that Dell tool? Would it have been somebody in the Premier's office? Did Peter Faist purchase that Dell tool directly and have it downloaded? Those are some of the questions that I have, because you've mentioned it several times. I'm just trying to wrap my head around who would have paid for this: the public service, the Legislative Assembly, the Liberal Party or Peter Faist himself.

Mr. André Duval: What I can tell you is that we know for sure that this software was downloaded on those two workstation hard drives when Mr. Peter Faist was working on those hard drives using the password of Ms. Wendy Wai. How he obtained the software and who paid for it, I don't have that information right now.

Ms. Lisa MacLeod: Is that part of the discussions you're having with Dell? Or is that something—

Mr. André Duval: I'm hoping that, with the forensic examination that the OPP is doing right now—these officers are experts in that field—they're going to be able to tell us exactly what that tool does, when it was downloaded and what its function is.

Ms. Lisa MacLeod: Okay, so you don't have that information at this time; you just know, simply, that it was on the two computers of Ms. Ramey and Mr. Lagerquist, and you expect that it has been on the other computers.

Mr. André Duval: Yes, I do expect that the same software was downloaded on those remaining 22 workstation hard drives, but again, we have to wait for that forensic examination to be completed.

Ms. Lisa MacLeod: Now, just correct me if I'm wrong: You're suggesting in the ITO that it was used to disguise data.

Mr. André Duval: It is possible. It could disguise data. It could erase data. It could maybe transfer data from one computer to another. Again, the forensic examination will determine that.

Ms. Lisa MacLeod: Okay. You mentioned 24 computers within the premier's office. Are you aware of any other computers that may have been accessed remotely by Mr. Faist anywhere else in the government or within the Liberal Party?

Mr. André Duval: No, we're not.

Ms. Lisa MacLeod: You're not.

In terms of the time frame, I understand the issues you have not only with trying now to restore those hard drives, but then to get the data off those with respect to the gas plants. That's going to be a lengthy process. Do you have a time frame? I don't expect it's going to happen next week, but will it be within the next five to six months or beyond?

Mr. André Duval: I had a conversation with our forensic expert from the OPP just yesterday, and the examination is ongoing. As I said in my opening statement, it is very lengthy and complex. We are looking at probably many months before we have a final report on the examination of those 24 hard drives.

Ms. Lisa MacLeod: I know this might be putting you in a difficult spot, but in your opinion, does the OPP have the resources necessary in order to complete this task in a timely manner?

Mr. André Duval: Again, I have to repeat, I guess, my specific role in this—

Ms. Lisa MacLeod: I see that the deputy commissioner perked right up.

Mr. André Duval: As a detective constable and being far away from the duties of the commissioner, it would be the case manager who would determine if there are enough resources, or even the commissioner.

0920

Ms. Lisa MacLeod: Okay. I just want to go back to technology for a moment, and then I think I'd like to take a different turn. The ITO mentions physical workstations. I noticed in the ITO that some people had multiple workstations under their names, which makes me question if they actually were the person that was assigned to that desktop. For example, Wendy McCann had a couple of workstations. I think that was quite interesting, but what I did notice that wasn't there were laptops, cell-phones and BlackBerrys. Were any of those seized as well, as part of this search warrant?

Mr. André Duval: If I remember correctly, I believe there were two workstation hard drives coming from laptops that were seized.

Ms. Lisa MacLeod: And that was included in the 24?

Mr. André Duval: Yes.

Ms. Lisa MacLeod: Okay. Who did those belong to?

Mr. André Duval: I believe one of them was Miss Wendy McCann, which is number 24. I wouldn't venture on the other one, Ms. MacLeod. I'm sorry, but I'm pretty sure number 24 was one laptop. I would have to review my notes on that.

Ms. Lisa MacLeod: Okay. Thank you for that.

I'd like to ask you a quick question about Peter Wallace, the cabinet secretary. He features prominently in this ITO.

Mr. André Duval: Yes.

Ms. Lisa MacLeod: It is very clear that on a number of occasions he was raising some red flags and offering his position that they were treading down a path that had never been treaded down before. At what point, in your opinion based on your discussions with him, would he first have been aware that there would have been a destruction of documents, either with public service records or with Legislative Assembly records?

Mr. André Duval: I think he was advised of such by the OPP investigators when he was providing a statement.

Ms. Lisa MacLeod: And that would have been in February of last year?

Mr. André Duval: I don't have an exact date. Mr. Wallace provided two statements to detectives. I would have to review my information to obtain—I don't have the exact dates, but it would be during his second statement to the OPP when he was made aware of that possibility.

Ms. Lisa MacLeod: Okay. Are you aware of any internal investigation, either launched by Peter Wallace as cabinet secretary or by Kathleen Wynne as Premier of the government, into the destruction of documents?

Mr. André Duval: I am not.

Ms. Lisa MacLeod: You are not. Will you be interviewing former Premier Dalton McGuinty?

Mr. André Duval: Again, that's up to the case manager to decide. As I mentioned a few times, we're following the evidence. If the case manager believes that Mr. Dalton McGuinty could provide valuable information to this investigation, I'm sure he will be approached.

Ms. Lisa MacLeod: Okay. During your ITO, you indicate that Peter Faist had no security clearance or background check before accessing computers in the Premier's office. Were you aware that he was also working for the Liberal caucus and the Liberal Party of Ontario at the same time?

Mr. André Duval: Not at the time I was producing that document.

Ms. Lisa MacLeod: Are you aware of any background issues Mr. Faist may have had in the past—run-ins with the law or anything like that?

Mr. André Duval: Again, I'm not at liberty to discuss if he had any prior involvement with law enforcement. That would be confidential information—

Ms. Lisa MacLeod: That would be at the Ontario Superior Court?

Mr. André Duval: Yes.

Ms. Lisa MacLeod: Right. Were you aware that a judge had at one time said he was inconsistent in his testimony?

Mr. André Duval: Again, you're asking me to speak on a case over here, and I think it's not fair to answer that question for Mr. Faist.

Ms. Lisa MacLeod: Okay.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, a point of order.

Ms. Lisa MacLeod: I'll redirect. It's fine.

Mr. Bob Delaney: Chair, I would ask that they tread cautiously in trying to cross-examine a witness who has not appeared through a witness who is here, who is reluctant to say something about someone who has not given testimony.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. I think the issue, of course, is the speculative hypotheticals, as you're well aware.

Ms. MacLeod, the floor is yours.

Ms. Lisa MacLeod: Sure. Happy to redirect. I just think it was important to know that there has not been a criminal background check done on Mr. Faist. Did the OPP engage in any criminal background checks for any of the witnesses that they've either spoken with or have tried to speak with?

Mr. André Duval: I think it is a common practice for law enforcement, not only the OPP, but—when you do witness interviews, you prepare yourself, and of course you do a background check on those witnesses.

Ms. Lisa MacLeod: Okay, so you are aware of them. Thank you.

Peter Faist stated on Twitter last November, "The informed among us are aware that users aren't responsible for archiving their emails. Their administrators are." In your professional opinion, who is he referring to when he says "administrators"—government or political staff?

Mr. André Duval: He's probably referring to, I would say, the chief of staff, the people who should be aware of the policy of the government when it comes to document retention—managers and so on.

Mr. Bob Delaney: Chair, I would to add again that the witness has said the word "probably" twice. Ms. MacLeod's question is asking him to speculate on administrative procedures in a government department.

Ms. Lisa MacLeod: To be fair, I did not raise a point of order when your caucus decided to raise a point of order on the same train of thinking.

Mr. Bob Delaney: I don't want to interrupt you. I'd just like you to stay within the scope—

The Chair (Mr. Shafiq Qaadri): Just to repeat, for the benefit of the committee as well as for the witness, speculatives and hypotheticals—first of all, you're welcome to deal with them as you see fit, but you're not required to answer. Please go ahead.

Ms. Lisa MacLeod: Okay, thank you. Did Laura Miller and Peter Faist give an explanation as to why they refused to speak to the OPP?

Mr. André Duval: No.

Ms. Lisa MacLeod: Are you aware that Laura Miller's lawyer is at the moment suggesting that she did in fact give a statement to the police for this investigation?

Mr. André Duval: To my knowledge, as of today, 3 April, 2014, she has declined to provide a statement to the OPP investigators.

Ms. Lisa MacLeod: Thank you very much for that confirmation.

This committee is trying to bring Mr. Faist in to the committee for questioning. We have been told that he has

moved, or we are unable to access his contact information. Are you able to provide us with the contact information?

Mr. André Duval: I would be able to. Not right now, but I would be able to provide that information, if you wish.

Ms. Lisa MacLeod: Thank you very much. Perhaps our Clerk will be able to speak with you about that contact information. We appreciate that.

In terms of the location of some of those you've spoken to, perhaps they may have moved outside of the province. Is the OPP able to go to another province to question these individuals, if that's the case?

Mr. André Duval: Yes, we can.

Ms. Lisa MacLeod: Okay. So just to be very clear, if we were to try, for example, to speak with somebody from British Columbia who did not want to testify in front of this committee, we would not have jurisdiction for our Sergeant-at-Arms to get one of them and compel them to testify the same way we would be able to if they were in the province of Ontario. I think that's very important. So you will be able to question individuals even though they're outside of Ontario?

Mr. André Duval: That's correct.

Ms. Lisa MacLeod: And there are no jurisdictional issues with, for example, British Columbia police or Quebec police?

Mr. André Duval: That's correct.

Ms. Lisa MacLeod: Okay. How much time do I have left, Chair?

The Chair (Mr. Shafiq Qaadri): You have less than four minutes.

Ms. Lisa MacLeod: Less than four minutes? Well, that gives me enough time to ask the next question, then.

One of the individuals who I think is quite interesting in the ITO is David Nicholl. I notice in a couple of different passages that he had a different story than both his superior and his subordinates. I'm wondering, based on the information that you have and this January 30 meeting that you reference within the ITO, how did Mr. Nicholl's story appear compared to the others? Could you put that on the record for us?

Mr. André Duval: I believe the ITO is quite detailed on that meeting. I'm just going to try to refer to it here. It's at page 10 of the information to obtain.

Basically in that meeting, there was Mr. Peter Wallace, the cabinet secretary; there was Mr. David Nicholl; there was a legal counsel to Mr. Wallace, Mr. William Bromm; there was Ms. Linda Jackson; and I believe Mr. Steen Hume.

The topic was to discuss the request made by David Livingston to get an administrative password to gain access to all the desktops in the Premier's office. From that meeting, Mr. Nicholl was the only one who was under the impression that the approval was made to grant that request by Mr. Livingston, as the other people in that meeting came out with the knowledge that first they had to determine if anybody else had such an administrative password within the Premier's office. I think this is very significant in the investigation.

What we know is that shortly after that meeting, Mr. Nicholl met with Mr. Thom Stenson. Mr. Stenson is the manager of the information and technology service. Mr. Nicholl made a request to create a password on behalf of Mr. David Livingston that would allow a person to have access to all the workstations.

0930

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Lisa MacLeod: Okay. Just very quickly, and I'll pick up in the last 10 minutes: It has been reported in the media that David Nicholl and David Livingston had a pre-existing friendship based on a prior professional acquaintance. Did that come up during your investigation?

Mr. André Duval: It did.

Ms. Lisa MacLeod: Okay. So it's true?

Mr. André Duval: The investigation is ongoing. This is one of the, I would say, information we need to do more work on. I'm not at liberty to really go in deep details on that.

Ms. Lisa MacLeod: Okay. Thank you very much. I really appreciate you taking the time with us this morning. I look forward to the last 10 minutes.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod.

To the NDP: Mr. Tabuns.

Mr. Peter Tabuns: Thank you very much, Chair.

Mr. Duval, following on the last question that was asked, do you have any corroborating evidence for the understanding which Peter Wallace, Steen Hume and William Bromm had about their meeting with Mr. Nicholl—any evidence to corroborate their version of events that, in fact, they didn't decide to give these special administrative passwords?

Mr. André Duval: We have statements from all those individuals, and all their statements mention the same details and the same outcome from the meeting. With that, I am satisfied that this was the outcome of the meeting.

Mr. Peter Tabuns: Okay. So you accept their version of events in this matter?

Mr. André Duval: I do.

Mr. Peter Tabuns: Okay. I have minor factual things to address and then my colleague will speak.

You list a number of people involved in your ITO, including Mr. Vic Fedeli, Mr. Rob Leone and myself. I assume that is because we filed complaints. I filed a complaint with the Information and Privacy Commissioner. They filed a complaint with the OPP about destruction of emails. Is that correct?

Mr. André Duval: That's correct.

Mr. Peter Tabuns: Thank you.

Lastly, I'm not sure if you're aware: We in the NDP opposed the building of the Oakville plant before the contract was let and we warned about the Mississauga plant back in 2005. I don't know if you were aware of those realities.

Mr. André Duval: I was.

Mr. Peter Tabuns: Okay. With that, I'll turn it over to my colleague.

Mr. Jagmeet Singh: Sure. Thank you, sir. I'm just going to ask you some questions about access and specifically some of the evidence that you've indicated in your ITO that you expect to be able to obtain. I'll direct some questions around the investigation and then I'll move into the data recovery.

Just with respect to the investigation, before I talk about the data recovery, you indicate this date of March 20. Is it my understanding that the reason why you believe the computers were accessed up to March 20 is because that's the date that that special password was revoked? Is that the reason why you've narrowed in on that date?

Mr. André Duval: That's correct.

Mr. Jagmeet Singh: Okay. Is it possible that there was access after the 20th that you're just not aware of at this point in time; that there may have been access through other means?

Mr. André Duval: I don't believe so.

Mr. Jagmeet Singh: Okay. Are you hoping and do you think that the investigators will be able to ascertain exactly when and on which dates Peter Faist and Wendy Wai indirectly accessed the 24 computers? Are you hoping to find the exact dates, and is that something that you anticipate with the specialty of the folks involved, that the data recovery specialists and the forensic specialists will be able to come up with that evidence?

Mr. André Duval: We're hoping they'll be able to recover that data.

Mr. Jagmeet Singh: At this point in time, are you able to provide—and if this you think is something that narrows in on territory that is not appropriate, please feel free to use your discretion—an update on how far along the data recovery is? Based on your previous comment, I think you are confident, but how confident are you that the police will be able to recover data from the wiped machines, and how much?

Mr. André Duval: I can't speculate on how much we're going to be able to recover. The forensic examination is ongoing as we speak. How far they are, I'm not sure yet. How much we're going to recover, I just can't tell you right now.

Mr. Jagmeet Singh: Okay. And up to this time, in terms of the type of data that has been recovered, so far have you been able to recover emails or are you recovering documents, Word files? What types of documents have you been able to recover thus far?

Mr. André Duval: I can't provide that information right now.

Mr. Jagmeet Singh: Sure. I'm just going to turn your attention to the ITO now and some of the information that you've put in.

In terms of the background—before I talk about paragraph 300—you make mention of the date when Premier McGuinty resigns. On paragraph 300, you note: "On the 11th of February, 2013, Ms. Kathleen Wynne is sworn in as the Premier of Ontario and will lead a minority Liberal government." You noted that in your ITO.

Mr. André Duval: That's correct.

Mr. Jagmeet Singh: These are all for the purpose of providing background?

Mr. André Duval: That's correct.

Mr. Jagmeet Singh: I also note that later on, just below paragraph 475, you have an affiant note which indicates: "Ms. Kathleen Wynne was elected to replace Mr. Dalton McGuinty as leader of the Liberal Party on the 26th of January, 2013. The transition process to a new government started shortly after her nomination." You also included that as an affiant note. That's your addition?

Mr. André Duval: That's correct.

Mr. Jagmeet Singh: Okay. I note later on in the ITO that some of the interviewees, or the folks that you have interviewed, indicated that they believed, or they were given the explanation, that Mr. Faist was accessing their computers as a part of the transitioning from the previous Premier to the new Premier. Was that something that came up in the interviews?

Mr. André Duval: In two interviews: one with Ms. Lauren Ramey, and the other one with Mr. Jason Lagerquist.

Mr. Jagmeet Singh: Okay. In those two incidents, they provided that explanation that they thought Mr. Faist was accessing their computers—or they were provided with that explanation, that this was being accessed as a part of the transition.

Mr. André Duval: That's correct.

Mr. Jagmeet Singh: Okay. In total, if you can just provide me with a ballpark estimate, how many times were investigators at Queen's Park for interviews or for any other visits?

Mr. André Duval: It would be hard. I would have to look at my list of witnesses. If you could just allow me—

Mr. Jagmeet Singh: Yes, just take a moment, then.

Mr. André Duval: Let's see. If I go down the list—I would say that about 14 times, interviews were conducted in this location.

Mr. Jagmeet Singh: And the 14 times—would that be 14 different days?

Mr. André Duval: No, not 14 different days. We have to be mindful that this unit works from Ottawa, so two or three people would be interviewed in one day.

Mr. Jagmeet Singh: Okay. So approximately, if you give two or three—maybe between seven and five times?

Mr. André Duval: Yes, approximately.

Mr. Jagmeet Singh: Seven to five times.

Mr. André Duval: Yes.

Mr. Jagmeet Singh: So maybe it happened within a week?

Mr. André Duval: No, it would be over several weeks.

Mr. Jagmeet Singh: Over several weeks.

Mr. André Duval: Yes.

Mr. Jagmeet Singh: Okay, fair enough. Over several weeks and perhaps between a range of five to seven visits, actually, to Queen's Park—

Mr. André Duval: Roughly—

Mr. Jagmeet Singh: —and I won't hold you to it.

Mr. André Duval: —reasonable.

Mr. Jagmeet Singh: Yes, reasonable; okay, that's fine.

In your ITO, these are some of the documents that you're hoping to obtain. I understand you're hoping to obtain specific dates and specific computers that were accessed by Mr. Faist. That's some of the evidence that you would like to obtain. Is that correct?

Mr. André Duval: Yes, that's correct.

Mr. Jagmeet Singh: You would like to obtain the presence of emails that were deleted, so you can corroborate that emails were in fact deleted. So you would need to be able to recover emails. Is that correct?

Mr. André Duval: I wouldn't say only emails—

Mr. Jagmeet Singh: No, not only; I was going to go to other documents as well.

Mr. André Duval: The best way to describe that would be government records, which include emails and any other records that would be produced.

Mr. Jagmeet Singh: Sure. What other records would you say that are—

Mr. André Duval: Word documents, Excel worksheets, that type of document.

Mr. Jagmeet Singh: Okay, perfect. The folks who are working on this right now—what would their level of experience be in terms of their expertise around data recovery.

Mr. André Duval: The OPP is very lucky. Our forensic experts are among the best in the country, and they have great expertise to deal with this type of matter.

Mr. Jagmeet Singh: Okay. Are you able to distinguish between the hard drives, or the items that were seized as a part of the search warrant, and the data recovery on those, and any other hard drives or computers that you would need access to? What I mean by that is—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Jagmeet Singh: —my understanding is that the search that you've conducted is for physical drives that were located at a storage facility.

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Mr. André Duval: That's correct.

Mr. Jagmeet Singh: Were there any other drives that you were able to seize from the Premier's office itself?

Mr. André Duval: This ITO was basically concentrating on those 24 hard drives, and we managed to recover those 24 hard drives.

Mr. Jagmeet Singh: Okay. In addition to that, are there any other data centres or data facilities that you think might be able to provide you with some more insight, or maybe data recovery tapes that might be able to give you more insight into deleted records?

Mr. André Duval: Well, I can tell you today that there is no other search warrant being prepared.

Mr. Jagmeet Singh: Okay.

Mr. André Duval: But that could change rapidly.

Mr. Jagmeet Singh: Sure. I understand my time is just about up. Thank you very much for your time today.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side: Mr. Delaney, 10 minutes.

Mr. Bob Delaney: Good morning, Constable Duval.

Mr. André Duval: Good morning.

Mr. Bob Delaney: Throughout our conversations with you this morning, you have talked about something being possible or something being probable or likely. Would you explain what you understand is the difference between something that is possible and something that is probable?

Mr. André Duval: Well, I guess something that's possible is—would it be possible that this investigation would reveal more criminal offences? Well, of course, it's possible. Maybe it will not; maybe it will. "Probable" is maybe just a bit higher on that scale. I guess that would be the best way to describe the difference for me, in my opinion.

Mr. Bob Delaney: Right. So in other words, to use a slightly different example, you could say it is possible that the Toronto Maple Leafs could win the Stanley Cup, but it is likely not probable?

Mr. André Duval: I've got to be careful here. I'm from Ottawa.

Interjections.

Mr. Bob Delaney: Hence the reason I did not speculate into the realm of the possible with regard to the Senators.

To come back to our agenda, however, you said earlier, I think, it was possible for Mr. Faist to have had access to computers during the period from the third week of February up until when that password expired, which in my recollection was the 20th of March 2013, that it was possible. Right?

Mr. André Duval: That's correct.

Mr. Bob Delaney: Do you have any evidence that, in fact, Mr. Faist returned to the Premier's office after February 7 or accessed the machines in any way?

Mr. André Duval: Not as of today, no. We're hoping that the forensic examination will reveal that information.

Mr. Bob Delaney: So while it is possible, based upon the evidence that you have, it is not probable?

Mr. André Duval: I didn't say that. I would say that we have evidence from two witnesses that Mr. Faist accessed two workstation hard drives, because they were present during that time. It is an investigative theory that, because he accessed two of those 24 hard drives, he accessed the remaining 22.

Mr. Bob Delaney: What is the make and model of the 24 computers in question?

Mr. André Duval: They vary. I'm not too sure I've put the description in, because most of those workstations' hard drives are identified with a serial number and an evidence number. I don't have that information, Mr. Delaney, as of today. But if that's something that you're interested in, I'm sure we can provide it to you.

Mr. Bob Delaney: The reason I ask is, you have made repeated reference to a Dell tool, so do you know that the machines on which you've talked about the "Dell tool" being used are, in fact, Dell machines?

Mr. André Duval: I would have to review the list of the exhibits to give you a clear answer, but if I recall, most computers are not from Dell.

Mr. Bob Delaney: All right. The interviews that you talked about that occurred at Queen's Park: If an interview occurs at Queen's Park, does that necessarily mean that it is a political interview?

Mr. André Duval: No. This is part of the ongoing police investigation.

Mr. Bob Delaney: So if an interview occurs at Queen's Park, it may have occurred at Queen's Park or in another location perhaps because that's where both parties could agree to meet, or that's where the investigation was occurring. Correct?

Mr. André Duval: If you look in the appendix, the list of witnesses that we have, most of those individuals are working for the Ontario public service. This investigation is no different from any other. We interview people at their workplace on a daily basis. It's just sometimes more convenient for those people to meet with us at their work location than anywhere else.

Mr. Bob Delaney: Okay. So there's nothing special about the fact that an individual was interviewed at Queen's Park. As you said, it just may have been more convenient.

Mr. André Duval: That would be correct.

Mr. Bob Delaney: Okay. In some of the questions, we've talked about an individual accessing someone else's computer. If I use the expression "roaming profile," does that expression mean anything to you?

Mr. André Duval: You would have to define it for me.

Mr. Bob Delaney: Okay. For example, if you're running something like Microsoft Exchange, you would have a roaming profile that would enable you to access, with full security, all of your files on another investigator's computer in a different location, a capability you may or may not have at the OPP. If I talk about a roaming profile, does that mean anything to you?

Mr. André Duval: I would say to you that before making any conclusions like this, we're going to wait for the results of the forensic examination to tell us how those workstation hard drives were accessed.

Mr. Bob Delaney: Splendid. That's exactly where I was headed.

Chair, I think that is all I have to ask the witness. Thank you very much, Constable.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side, Ms. MacLeod.

Ms. Lisa MacLeod: Thanks very much, Chair. I appreciate that.

You wrote on page 9, "Affiant note: Ms. Kathleen Wynne was elected to replace Mr. Dalton McGuinty as leader of the Liberal Party on the 26th of January 2013. The transition process to a new government started shortly after her nomination." Can you provide us with a time frame there? What does "shortly" mean? A day? Two minutes?

Mr. André Duval: I would say right away.

Ms. Lisa MacLeod: Right away? Therefore, were you able to speak with anybody on Ms. Wynne's transition team, such as Monique Smith or others; perhaps her current chief of staff?

Mr. André Duval: To my knowledge, no.

Ms. Lisa MacLeod: You didn't speak with any of them?

Mr. André Duval: No.

Ms. Lisa MacLeod: When they moved into the office, during that transition period, would there have been people in that office from both the previous Premier's and the current Premier's office?

Mr. André Duval: I don't know.

Ms. Lisa MacLeod: Okay. In terms of some of the staff you've identified and spoken with, are you aware that some of them are still employed either directly by Kathleen Wynne or the government House leader or other ministers of the crown?

Mr. André Duval: As the affiant, I'm not aware of that.

Ms. Lisa MacLeod: You are not aware of that. Okay. That, personally, to me, is quite important, and I think it very much signifies that this is still the same government. It is a different Premier. You've stated already today that it is conceivable that those computers could have been accessed up until the 20th of March, 2013.

Mr. André Duval: It is possible.

Ms. Lisa MacLeod: That is important to me.

In terms of appendix D of your ITO, you state—and you've said this to my colleagues on a number of occasions. There is only one person, right now, of significant interest, as you submit in your report. I just wanted to once again confirm that it is conceivable that more individuals could be charged or there could be other search warrants. That is not without the realm of possibility.

Mr. André Duval: As I mentioned a few times today, the investigators will follow the evidence. In the event that more criminal offences are revealed, then we will investigate those matters to the fullest.

Ms. Lisa MacLeod: Going back, if I could, with the short time I do have, I'd like to talk once again about Mr. Nicholl. It's my understanding that an IT manager told the OPP anti-rackets unit that he had been told to create a super all-access password by David Nicholl. In your findings, did he have the proper authority to authorize this super all-access password?

Mr. André Duval: I don't know if Mr. Nicholl had the authority. I can testify today, based on the evidence I have in this information to obtain, that he made the request. I will let other people decide if he had that authority to do that, but that request was made, and the process was started after that request.

0950

Ms. Lisa MacLeod: And the request was actually initially made for Mr. Livingston to have that super all-access code, but that was rejected—instead to give it to Wendy Wai, according to the ITO?

Mr. André Duval: I'd be careful to say that it was rejected. The request was made—

Ms. Lisa MacLeod: But that's his side of the story—David Nicholl's side of the story.

Mr. André Duval: Yes—well, that's what he testified in his interview with the OPP.

What I will say is that the password was created. He was told that a person from Mr. Livingston's office would be assigned the password. That password was later assigned to Miss Wendy Wai, and if I can find the exact line—

Ms. Lisa MacLeod: Yes. You say on page 9, around line 450, "David Nicholl refused to provide administrative rights to David Livingston. He believed that administrative rights should be assigned only to personnel in the Information Technology Service. He advised David Livingston to seek the assistance of the cabinet secretary, Peter Wallace."

Mr. André Duval: Yes.

Ms. Lisa MacLeod: Then, on page 10, Mr. Hume states, "'Peter' was not typical and lacked sophistication: 'It's not typical ... my feelings on that are from the vantage point of that's really stupid it compromises the former Premier the integrity of his office in a way that's which is quite unfortunate but that is a judgment call that they chose to make that is not something we can protect them from.'"

So on the one hand, there was a decision to not grant David Livingston access, then, on the other hand, a decision by Mr. Nicholl to instead grant it to Ms. Wai, and then there were, I guess further on down here, some comments by senior civil servants that, when Peter Faist came in, it lacked sophistication and, in their words, "it was stupid" and that "it compromised the former Premier and his integrity"—in their words, not mine.

I'm wondering, at any point in time did Mr. Hume, Mr. Wallace, Mr. Stenson or Mr. Nicholl know that Peter Faist was going to be accessing that password and at any time in the conversations you had with the civil servants did it appear that Dave Nicholl wanted to bypass David Livingston in order to protect him later on and in order to set up Ms. Wai?

Mr. André Duval: Well, on your first question, if they knew that Peter Faist would be provided with that username and password? I would say no. There's maybe one part of your statement that's missing concerning Mr. Peter Wallace. At one point, Mr. Peter Wallace is advised that there are seven individuals in the Premier's office who have administrative rights—

Ms. Lisa MacLeod: And that there was confusion with respect to those two different types of access—

Mr. André Duval: Exactly. I think it's an important point to raise. That's also in the information to obtain. Those seven individuals had access only to their desktop. I mean—

Ms. Lisa MacLeod: But they were allowed to access other programs. Is that the case?

Mr. André Duval: Yes, but their password was only for one desktop computer. So they could not access the other person's desktop.

Ms. Lisa MacLeod: So Peter Wallace had confusion about what the super-duper, all-encompassing access pass was, compared to this access pass, for example, that Bradley Hammond would have had in the Premier's office in order to download programs?

Mr. André Duval: That's correct. So he was under the impression that it was the same type of administrative rights. So he was not, I would say, advised properly, informed properly, and his conclusion is that, "Well, if there are seven people with passwords, why can I not give another one since it's the same one?"

Ms. Lisa MacLeod: So who would have been negligent in their duty in informing Peter Wallace? Does that come up in your ITO?

Mr. André Duval: I believe it's maybe not in those words, but I think if you read the information to obtain, there was obviously a lack of communication between certain individuals.

Ms. Lisa MacLeod: Which individuals?

Mr. André Duval: Well, I think Mr. David Nicholl should have advised Mr. Peter Wallace that the password that he had requested from Tom Stenson was not exactly the same that the seven other individuals had. I believe if Mr. Wallace would have been provided with that information, the outcome might have been different.

Ms. Lisa MacLeod: Is there any indication, in the discussions you had towards putting this ITO together, of why Mr. Nicholl would have either neglected to follow proper protocol or why there was a challenge in his communications with his superior? Did that reveal itself?

Mr. André Duval: I believe, in the information to obtain, the investigators asked Mr. Nicholl—I'm trying to find the exact quote within here—if there was a difference, in his opinion, between those two administrative passwords. I believe his answer was that he did not believe that they were different. I'm just trying to find for you the—

Ms. Lisa MacLeod: That's a pretty big mistake for an IT officer, the deputy—effectively the chief information technology officer of the province.

Mr. André Duval: Here we go. I'll refer you to line 915 of the information to obtain. It's page 18. This is a quote from the information to obtain, and his statement. This is from Mr. Nicholl: "Admin rights are something more than we have just as ordinary users it gives you a bit more ability ... was there a difference between the admin rights?"—

The Chair (Mr. Shafiq Qadri): One minute.

Mr. André Duval:—"that the six (6) or seven (7) had versus the one (1)? I would say no it's the same thing."

Ms. Lisa MacLeod: Okay. I don't have enough time to ask you another question. I really appreciate you coming in today. I respect the work that you are doing and I know all my colleagues thank you for coming to our committee today and doing great work. We certainly appreciate the work of the OPP as well. Thank you.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. MacLeod.

Merçi, monsieur Duval, pour votre présence et votre présentation. You are officially dismissed.

COMMITTEE BUSINESS

The Chair (Mr. Shafiq Qaadri): We have a number of orders of business here for the committee: a subcommittee report, a deferred motion and a closed-session motion from Ms. MacLeod. May I ask somebody—

Mr. Peter Tabuns: Could we have a 10-minute recess? Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Tabuns?

Mr. Peter Tabuns: Could we have a 10-minute recess?

The Chair (Mr. Shafiq Qaadri): Sure, a 10-minute recess. We're coming up to question period, so I'd invite you to please—

Mr. Peter Tabuns: I understand.

The Chair (Mr. Shafiq Qaadri): Okay, 10 minutes. Recessed.

The committee recessed from 0957 to 1010.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The committee is now back in session. We have three or four orders of business.

Mr. Yakabuski, I'd invite you please to begin the reading of the subcommittee report.

Mr. John Yakabuski: I have a subcommittee report of the Standing Committee on Justice Policy.

Subcommittee on committee business

Report of the subcommittee

Your subcommittee on committee business met on Tuesday, April 1, 2014, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013, and recommends the following:

Ontario Power Authority

(1) That with respect to the committee's December 5, 2013, motion directed towards the Ontario Power Authority:

(a) That the confidential documents received from the Ontario Power Authority not form part of the committee's public record;

(b) That the Clerk of the committee retains the confidential documents for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the committee shall return the confidential documents to the Ontario Power Authority.

Ministry of Finance

(2) That with respect to the committee's May 7, 2013, motion directed towards the Ministry of Finance:

(a) That the confidential documents (version 1 and 2) received from the Ministry of Finance not form part of the committee's public record.

(b) That the Clerk of the committee retains the confidential documents (version 1 and 2) for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever

comes first, the Clerk of the committee shall return the confidential documents to the Ministry of Finance.

(3) That with respect to the committee's May 14, 2013, motion directed towards the Ministry of Finance:

(a) That the confidential documents (version 1 and 2) received from the Ministry of Finance not form part of the committee's public record;

(b) That the Clerk of the committee retains the confidential documents (version 1 and 2) for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the committee shall return the confidential documents to the Ministry of Finance.

Office of the Minister of Energy and Ministry of Energy

(4) That with respect to the committee's August 27, 2013, motion directed towards the office of the Minister of Energy and Ministry of Energy:

(a) That the confidential documents received from the office of the Minister of Energy and Ministry of Energy not form part of the committee's public record.

(b) That the Clerk of the committee retains the confidential documents for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the committee shall return the confidential documents to the office of the Minister of Energy and Ministry of Energy.

(5) That with respect to the committee's December 5, 2013, motion directed towards the office of the Minister of Energy and Ministry of Energy:

(a) That the confidential documents received from the office of the Minister of Energy and Ministry of Energy not form part of the committee's public record.

(b) That the Clerk of the committee retains the confidential documents for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the committee shall return the confidential documents to the office of the Minister of Energy and Ministry of Energy.

I move that the subcommittee report be adopted.

The Chair (Mr. Shafiq Qaadri): Any comments before we accept the subcommittee report, as read?

Mr. Bob Delaney: Just that it was very eloquent reading.

Mr. John Yakabuski: Oh, thank you. It's fairly repetitive.

The Chair (Mr. Shafiq Qaadri): All those in favour of the subcommittee report, as read? Those opposed? Okay. The report is accepted.

We now have a deferred motion. Mr. Delaney, I'd invite you just to reread it for the committee, please.

Mr. Bob Delaney: The motion reads as follows: Pursuant to the subcommittee report dated March 5, 2013, I move that the Standing Committee on Justice Policy retain external legal counsel and that external counsel be present during committee meetings related to the orders of the House of February 20, 2013 and March 5, 2013.

The Chair (Mr. Shafiq Qaadri): Comments before we vote on this motion? Mr. Tabuns.

Mr. Peter Tabuns: Mr. Delaney, just for the public record, can you explain why you've made this motion? Secondly, I will have a question for the Clerk about how we actually follow through on implementing this.

Mr. Bob Delaney: Certainly. In fact, I'm kind of glad you asked that, because there are a few things I think we should discuss. I think that the existence of parallel committee proceedings at the same time that we have an OPP investigation probably makes it necessary for this committee to be able to regularly seek outside legal counsel to ensure both the protection of the witnesses who come here and also the integrity of the ongoing police investigation. I think that's something that all of us had said, that in our zeal to ensure that this committee does the right thing, the last thing we want to do is ensure that, either by design or by accident, the police cannot do the right thing.

The other thing is that, from time to time, we may need some legal advice owing to the exact and very unique nature of parliamentary privilege. I think that we may regularly, at this stage in the committee's life, need to be able to ask a legal question of legal counsel. That said, I thought Mr. Singh brought up a very, very good point the other day when he said that we may not need to have our legal counsel present for every witness. But there are some witnesses for whom I think it would be nearly unanimous that we would say, "Yes, I think we should have our legal counsel."

The final point I'm going to make: I want to read a few things; it's not long, so just bear with me for a second. Part of the committee's mandate is to uphold procedural fairness. To that end, on February 20, 2013, last year, Mr. Leone moved—and I'll read just part of it—"That this House directs the Minister of Energy and the Ontario Power Authority to immediately table with the Clerk of the House all remaining documents related to the Oakville and Mississauga Gas Plants ordered by the Standing Committee on Estimates on May 16, 2012." Then he discussed the matter of the Speaker's case of a *prima facie* case of privilege with respect to the production of documents. His motion dealt with the fact that "the committee shall be authorized to meet at the call of the Chair, concurrently with the House or when the House stands adjourned."

I think one of the operative things in Mr. Leone's motion, when it was passed, was the following amendment: "That, in exercising its authority throughout the committee proceedings, the committee shall adhere to the minimum standards of procedural fairness and the principles of fundamental justice as required by the Charter of Rights and Freedoms." The answer to your question is, in order to comply with the committee's own mandate to uphold the Charter of Rights and Freedoms and to ensure that the committee's work is done without putting any current or ongoing investigation at risk, I think it's essential that the committee be able to consult with external counsel who specializes in these matters.

The Chair (Mr. Shafiq Qaadri): Thank you.

Ms. Lisa MacLeod: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, and then Ms. MacLeod. Or if you'd like to give the floor to Ms. MacLeod—as you like.

Mr. Peter Tabuns: If Ms. MacLeod is going to ask Mr. Delaney a question, then that's fine. My next question is to the Clerk.

The Chair (Mr. Shafiq Qaadri): Fine. Ms. MacLeod.

Ms. Lisa MacLeod: I was just asking if we could call the question to vote. I believe that we've got support for this. It's just that we're so close to question period.

Mr. Peter Tabuns: I will be very quick—

The Chair (Mr. Shafiq Qaadri): That would be a first, but do go ahead, Mr. Tabuns.

Mr. Peter Tabuns: To the Clerk: The process for hiring the lawyer and the fact that it needs to be established now that the lawyer will be selected by the unanimous consent of the committee and directed by three-party support of any direction—is that correct?

The Clerk of the Committee (Ms. Tamara Poman-ski): We can start the process off in subcommittee, as we usually do, and figure out all the logistics and whatever we agree on in subcommittee in terms of hiring a lawyer and picking a lawyer and the mandate of what we'd like them to do. Then we would vote for it in full committee.

Mr. Peter Tabuns: I would like to amend this motion to determine that the selection of a lawyer will be by unanimous consent of the committee.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, we do need a formal amendment. I think that it's pretty well understood that if any one party has strong objections to the lawyer, we would probably not select that lawyer. If that's an assurance that's good enough for you—if you need it in writing—

Mr. Peter Tabuns: Is that an assurance from all parties that it will be unanimous?

1020

Ms. Lisa MacLeod: Yes.

Mr. Peter Tabuns: Good.

Mr. Bob Delaney: Yes. I have no trouble. In fact—

The Chair (Mr. Shafiq Qaadri): All right. Those in favour of this—okay.

Mr. Bob Delaney: I was just going to say that, moreover, I think the things that—

Mr. John Yakabuski: By the time we agree on this, I'll probably have a law degree, so maybe I'll do that.

Mr. Bob Delaney: I'm just sitting here watching your beard grow, Yak.

I think, as a committee, the things that our counsel can assist with—and I do think it's important to put this on and discuss it. I think we may need assistance with measures to require the attendance of witnesses and/or the production of documents, which certainly we've seen all of us talk about this morning.

It may be necessary for counsel to assist the committee in advising witnesses of what their privileges and duties both are and aren't. I think counsel should be able

to provide advice to the committee, to seek to avoid prejudice to the OPP investigation or to any future criminal proceedings with respect to matters that may be outside the scope of this committee. Some of the time, we tend to wander close to the boundaries, and it may be necessary to find out where those boundaries are.

It may be necessary for counsel to help us with advice to the committee on any objections that are raised by witnesses to questions. It may be necessary for counsel to provide advice to the committee on the legal implications of documents that are produced by witnesses.

Mr. Peter Tabuns: I think that has been a good explanation. We're ready to proceed.

Mr. Bob Delaney: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you.

Those in favour of this legal counsel motion? All in favour? All opposed? Motion carried.

Ms. MacLeod, you have, I believe, two motions?

Ms. Lisa MacLeod: I have a motion I'd like to defer until the next meeting and after the witness appears.

The Chair (Mr. Shafiq Qaadri): The one here?

Ms. Lisa MacLeod: No. That's not mine; that's Ms. Thompson's.

The Chair (Mr. Shafiq Qaadri): Oh, the other one. Okay, fair enough. Which one are we deferring?

Interjection.

Ms. Lisa MacLeod: That's mine, yes.

Interjection.

Ms. Lisa MacLeod: Okay. The one on security is Lisa Thompson's.

The Chair (Mr. Shafiq Qaadri): I see.

Ms. Lisa MacLeod: The one on inviting the deputy commissioner is mine. I'd like to put it on the floor and defer it until after—

The Chair (Mr. Shafiq Qaadri): Fair enough. Please just read it into the record.

Ms. Lisa MacLeod: Okay, I would read it into the record, and I'd like to have discussions with my colleagues about this one: That the Standing Committee on Justice Policy invite Deputy Commissioner Scott Tod to a closed session meeting for the purpose of a discussion regarding the search warrant of February 12, 2014.

The Chair (Mr. Shafiq Qaadri): Fair enough. We will not vote on the motion today, but if you have comments, I suppose we can do that now.

Ms. Lisa MacLeod: Yes.

Mr. Bob Delaney: We know what the motion is. It gives us some time to talk about it, and we'll defer dealing with it until the next meeting.

Ms. Lisa MacLeod: Yes, until after the witness speaks, though.

Mr. Bob Delaney: Perfect. I have no objection to that.

Ms. Lisa MacLeod: Okay. I think that should be a standing standard.

The Chair (Mr. Shafiq Qaadri): Fine. Is that suitable, Mr. Tabuns?

Mr. Peter Tabuns: That's fine.

Mr. Bob Delaney: It's hard enough to get these people here. When we get them here, we want to deal with them.

The Chair (Mr. Shafiq Qaadri): Ms. Thompson.

Ms. Lisa M. Thompson: I move that the Standing Committee on Justice, through the Chair, request that the Legislative Security's branch conduct a report on the activity of Peter Faist, Laura Miller, Wendy Wai, Brian Gower, David Nicholl and David Livingston between January 1, 2013, and March 20, 2013. This report should include the following:

(1) The date and times these individuals entered any legislative building, the purpose of their visit, and who they were accompanied by.

(2) The dates and times these individuals entered the Premier's offices, the purpose of their visit, and who they were accompanied by.

And that this report be delivered to the committee no later than the day that falls seven business days after this motion has passed.

The Chair (Mr. Shafiq Qaadri): That's fine. We accept your motion as read. The Chair will need to defer consideration of this, for various reasons, so I think we'll leave discussion of this, as well, until next time.

Ms. Lisa M. Thompson: Fair enough.

The Chair (Mr. Shafiq Qaadri): Any further committee business? Yes, Mr. Tabuns.

Mr. Peter Tabuns: Just one question: If the Clerk could update us on her efforts to bring our witness Peter Faist before the committee.

The Clerk of the Committee (Ms. Tamara Poman-ski): Sure.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod.

Ms. Lisa MacLeod: Thank you, Chair. Just if the Clerk could follow up with Constable Duval, who indicated he does have a fixed address for Mr. Faist.

The Clerk of the Committee (Ms. Tamara Poman-ski): Yesterday I received a call from Mr. Faist—and it's pronounced "feist"; I got it confirmed.

Ms. Lisa MacLeod: Okay. Faist had a heist.

Mr. John Yakabuski: So it does rhyme with "heist."

The Clerk of the Committee (Ms. Tamara Poman-ski): Apparently there's a band, and it's just like the band Feist.

Anyway, Mr. Faist's lawyer contacted my office. I have contact information, and we are going through his lawyer. An invitation was sent out late yesterday afternoon via his lawyer, for next Thursday.

Mr. Peter Tabuns: For next Thursday? Very good. Thank you very much.

Ms. Lisa MacLeod: He'll be here next Thursday?

The Clerk of the Committee (Ms. Tamara Poman-ski): We'll see. I haven't heard back yet.

The Chair (Mr. Shafiq Qaadri): Thank you. The committee is adjourned.

The committee adjourned at 1025.

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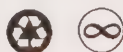
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 8 April 2014

Mardi 8 avril 2014

The committee met at 1502 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Welcome, colleagues. Before inviting our first witness to present, I will now rule on the motion presented previously by Ms. Thompson. The ruling is as follows:

I have had the opportunity to carefully study the motion moved by Ms. Thompson at the last meeting of the committee and will now rule on the orderliness of the motion. First, the motion refers to the "legislative securities branch," which does not exist, and to "any legislative building," which is vague and confusing. If passed, this motion would likely be problematic to fulfill.

Second, the information that is being sought is not relevant to the committee's mandate, which, let us recall, is to consider the Speaker's ruling of September 13, 2012, in the matter of the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants. With respect to the committee's consideration of the Speaker's ruling, whether any of the named individuals were merely present in the legislative precinct during the first 89 days of 2013 has no bearing on how decisions were made regarding the May 2012 request for documents by the Standing Committee on Estimates. With respect to the decisions concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants, it is not relevant to those specific matters whether the individuals named in the motion were present in any part of the legislative precinct many months after those decisions were made.

To be clear, the OPP investigation into the allegation of deleted emails and cleared hard drives is not the mandate of this committee, nor is the committee competent or authorized to be in the business of forensic auditing, tracking or surveillance of people's movements, and this is important. The Chair does recognize your legitimate request for documents that are responsive to the committee's mandate and that may have resided or existed on the allegedly erased hard drives, and should any documents eventually be recovered that are responsive to previously passed motions of this committee, the committee is absolutely entitled to those documents without delay.

I therefore find Ms. Thompson's motion to be beyond the scope of this committee's authority, and rule it out of order.

Considering this ruling has reminded me that the limitations on the committee's authority and jurisdiction apply not only to the documents and information it can seek to have produced but also to the oral testimony it can seek from witnesses. In short, this committee cannot give itself rolling authority to widen its mandate, and I will be continuing to help the committee maintain the relevance of its questions to and from witnesses.

This is a ruling. It is non-debatable. We will now move to our first presenter of the afternoon.

MR. DAVID NICHOLL

The Chair (Mr. Shafiq Qaadri): Mr. David Nicholl, I welcome you in your capacity as corporate chief information and information technology officer in the Ministry of Government Services, and you will now be sworn in by our highly able Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. David Nicholl: I do.

Le Président (M. Shafiq Qaadri): Merci, monsieur Nicholl. Vous avez cinq minutes pour vos remarques introductoires. S'il vous plaît, commencez maintenant.

Mr. David Nicholl: Thank you, Mr. Chair. My name is David Nicholl. I am the corporate chief information officer for the Ontario public service. I've been working for over 35 years, and have been in the public service for over 12. I take great pride in overseeing the delivery of critical IT services to the people of Ontario.

In my opening statement, I feel it is important to confirm that I have co-operated fully with the OPP investigation. I've participated in an interview, provided supplementary information and notes of relevant events, and have overseen the provision of technical support to the OPP investigators.

I'd next like to respond to suggestions in the media that I have a personal friendship with Mr. Livingston, the former Premier's chief of staff. I have never had a personal friendship with Mr. Livingston. From 1985 to 1992, I held an IT position at TD Bank; in those years,

Mr. Livingston was an executive of the bank. I never worked in his department, but did participate in a number of meetings concerning IT issues around two of the business areas with which Mr. Livingston was associated. We had no other contact.

I next encountered Mr. Livingston approximately 15 years after I left TD Bank, when he was appointed the CEO of Infrastructure Ontario. In my role as CIO of the OPS, I met with Mr. Livingston and IO staff on a number of occasions to discuss the projects we had in common, including the building of our new data centre in Guelph, the creation of a new business model supporting IT services across the broader public sector, the potential privatization of ServiceOntario, and the procurement options around providing public safety radio services to the OPP and other emergency services. I never met with Mr. Livingston outside of work.

As you are aware, Mr. Livingston then became the chief of staff to the Premier.

Prior to the phone call requesting the admin rights, I had two interactions with him. The first was the conversation referred to in my previous testimony concerning the deletion of email accounts and the deletion of emails within an account. The second was a brief appearance I had in the Premier's office to discuss the inclusion of IT content in the 2012 fall economic statement.

On January 25, 2013, I received a call from the Premier's chief of staff. He first requested information about decommissioning email accounts for departing members of the Premier's staff. He then asked for administration rights to PCs used by staff in the Premier's office to enable the cleanup of hard drives prior to the new team coming in. I advised him that I did not have the authority to grant the administration rights for Premier's office staff. I referred him to speak with the Cabinet Office.

On January 30, the Cabinet Office called a meeting, which I attended. We discussed determining which staff in the Premier's office had existing admin rights, and we discussed the granting of new admin rights to the computers in the Premier's office. I did not leave the meeting with any direction to implement administration rights, but I did meet with technical staff to determine who had the admin rights already in the Premier's office, and to make sure the team were ready to implement the admin rights if so directed by Cabinet Office.

The next morning, I was directed by Cabinet Office to proceed with implementing the admin rights for Premier's office computers, and to expect a call from the Premier's chief of staff at 2 p.m. that afternoon. Over the next few hours, in preparation for the 2 p.m. call, I received from the Cabinet Office a detailed legal memo that I was to deliver to the chief of staff. At 2 o'clock, I received the call from the Premier's chief of staff and I read the contents of the memo to him and was joined for the call by my ministry legal counsel.

Following this call, as directed, I sent the memo to the Premier's chief of staff in the form of an email. I attached the Premier's office records schedule, which establishes the disposition process of records in the Premier's office.

The memo clearly states the requirements to preserve business records as well as any records for an FOI or litigation hold, for all of the Premier's office email accounts and computer hard drives. Only after proper record retention can hard drives be wiped for new users. The chief of staff assigned his executive assistant to be the contact point with IT technical staff to implement those admin rights. Thank you, Mr. Chair.

1510

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Nicholl. To the PC side: Ms. MacLeod, 20 minutes.

Ms. Lisa MacLeod: Mr. Nicholl, this is the third time you've been to this committee. Right?

Mr. David Nicholl: It is.

Ms. Lisa MacLeod: And each time you come, we find out different information, but you're here now because of what we've learned through the media and through an ITO, an information-to-obtain, from the OPP.

I've got to give you credit: Of the four big players in this ITO—what looks like a Canadian version of House of Cards—you're the only one to have actually spoken to the OPP. I will give you credit for that.

I have spent a lot of time looking at transcripts from this committee. I was here. I actually wished you well last time you had appeared here. You told me the only time you spoke with the OPP—it was ongoing, but it was because they were clients of yours. You didn't indicate to this committee that you had spoken to the OPP for the ongoing investigation.

Previous to that, before I arrived at this committee, you spoke with my colleague Mr. Vic Fedeli, who I will credit as the person responsible for this OPP investigation—along with Mr. Leone. You decided to tell him the difference between what an admin right was and an email account. Then I read in the OPP ITO on page 12—you said that they can't coexist to Mr. Vic Fedeli back when you had arrived here a year ago, and then we realized that the administrative right requested by David Livingston would, however, allow a person to see the data saved by the other users on the hard drives of the desktop computers. It would also allow the person to delete or add software or delete any file from the local drive of the desktop computer without leaving a footprint behind. That was what was eventually given to Miss Wendy Wai, who had no computer skills whatsoever.

If I look a little bit frustrated on behalf of many members of this committee, it is because you are now here for a third time on a serious matter before the people of Ontario, and we very seldom get responses to our questions and then we find this very salacious ITO for an ongoing criminal investigation into somebody who you used to work for.

Now, you stated that you weren't that close. I would like to know if you could shed any light for us on what type of interview you would have had and what your relationship would have been with Mr. Livingston and how you may have described him to the OPP. Could you do that for us?

Mr. David Nicholl: Sure. So this is when I would have met with the OPP for my first interview. I had

actually gone to the interview to talk about, as I have with you many times before, our email system. I'll be very honest: I was very unprepared to talk about the activities on the admin rights.

When they asked about my experience—they looked up, I think, my LinkedIn account. They saw that I had worked at TD. As I mentioned in my opening statements, there were a couple of crossing paths. I was, frankly, a fairly junior IT person within the system's research and development area of the TD Bank. I had worked on the Green Line Investor Services piece of business at one time—it's discount brokerage. We had set up a call centre, and Mr. Livingston had a role within Green Line Investor Services. He was just a name at that time. I had no interaction with him during the GLIS time.

Ms. Lisa MacLeod: Over the past number of years, would you have considered him somebody you admired?

Mr. David Nicholl: In all honesty, there was such a long gap, from TD until now—I left there in 1992. It's a long, long time. I wouldn't have thought of him in 15, 16 years. In all honesty, I just wouldn't. I wasn't even in the country for some of the time, to be honest, so I really wouldn't.

Ms. Lisa MacLeod: But was he somebody that you would have done anything for, given your relationship and how you worked with him?

Mr. David Nicholl: Absolutely not. When the call came in, when he did call me, following being directed to me from the secretary of cabinet, my first reaction, as I said in my opening, was, "I don't have the authority to do that." Actually, two things: "I don't have the authority to grant those rights. You need to talk to Cabinet Office, because I don't have the authority to grant"

Ms. Lisa MacLeod: But then you did grant the rights.

Mr. David Nicholl: Cabinet Office granted it. I set our guys to implement it.

Ms. Lisa MacLeod: Who in Cabinet Office granted it?

Mr. David Nicholl: To me, it came from the secretary of cabinet's executive assistant—

Ms. Lisa MacLeod: And who is that, for the record?

Mr. David Nicholl: Steen Hume—and the deputy of policy, Scott Thompson. They were the ones who actually picked the phone up, as I said in my opening remarks, and said, "You have the go-ahead to go and do this. Please do. Expect a phone call at 2 p.m."

Ms. Lisa MacLeod: So that was your change of heart. So Peter Wallace didn't tell this committee everything that he knew—

Mr. David Nicholl: I don't know.

Ms. Lisa MacLeod: —because what you're explaining is a bit different. In the report on the ITO, in paragraph 440, it was Mr. Livingston who had first approached you to ask for these administrative rights to clean the hard drives.

Then you go to paragraph 450, just down further on the page. Your first reaction was to refer him to your boss, Peter Wallace. Now you're telling us that Peter Wallace's staff were the ones who actually gave the go-

ahead, yet the ITO is quite clear that Peter Wallace was uncomfortable with that request.

Later, in paragraph 570, we see a transformation of your participation from the original request for a super password to be created for Livingston to what we now know to be something that's part of a breach-of-trust investigation.

Then, in paragraph 660—and I know I'm going very fast here, and I do hope you have the ITO in front of you—you began to grease the skids, moving things more quickly. We know, for example, that some of your subordinates within your department were confused that you were visiting them in their office. It would be akin to Tim Hudak walking into our receptionist's office and wanting to find out exactly how they're logging every single call. That's sort of how that happened with you.

I just want to know, can you explain for this committee, and everybody who's watching at home, how you went from a vast discomfort at this request by David Livingston to actually granting this super password?

Mr. David Nicholl: Let's just clear up a couple of technical things first, as far as the granting of admin rights, and it's a really, really important point. There are two types of admin rights. There is no such thing as anything "super" or anything like that. There are only two: There is an individual administration right, and there is a group administration right. The individual administration right is probably what you all have at home, where you can go on and do stuff to your PC. You can load software and all the stuff you said.

The group admin right allows a single person access to multiple computers—

Ms. Lisa MacLeod: And is that what the seven individuals had in the Premier's office?

Mr. David Nicholl: They had individual admin rights. There was no group at that point. Once you have logged onto the machine, the ability is identical. There is no difference whatsoever in your capability.

The reason to go for a single group administration right was a serious desire to ensure—

Ms. Lisa MacLeod: That all the hard drives could be deleted.

Mr. David Nicholl: —that the line of accountability goes directly to the chief of staff. That was so important, because when that legal memo came from Cabinet Office after the call with the approval, it was really, really important that—I had to read it out. I physically read the memo out to the chief of staff, and then I sent it to him by email with the enclosed Premier's records schedule, because it was so important that he understood, "You're responsible. You're accountable. You've got to take it."

Ms. Lisa MacLeod: But Wendy Wai was responsible. You gave her the administrative rights. Why did you choose her? As a stooge?

Mr. David Nicholl: No, he proxied her as him. Still, he had the accountability; he never got rid of that. He could appoint anyone he wanted, but—

Ms. Lisa MacLeod: Including Peter Faist, who had no criminal background check.

Mr. David Nicholl: He still carries the accountability; he cannot get away from it.

Ms. Lisa MacLeod: Did you ever, at any point in time, when you had granted this to Mr. Livingston, understand that there was going to be somebody not from the public service or the Premier's office accessing all of those sensitive materials and those documents, as well as those computers?

Mr. David Nicholl: No, I did not.

Ms. Lisa MacLeod: And you never thought to ask?

Mr. David Nicholl: I never thought to ask.

Ms. Lisa MacLeod: You thought Wendy Wai, who had limited computer skills, was going to do this?

Mr. David Nicholl: No. There were already seven people within the Premier's office who actually already had administrative rights. They would know—

Ms. Lisa MacLeod: But not the same; you've just explained that there's a difference between individual and group rights.

Mr. David Nicholl: Only when you're logging on. The minute you're on, they're identical, absolutely identical. In fact, somebody coming from home—seriously, somebody coming from home—who has loaded software on their PC at home could come in and load software—

Ms. Lisa MacLeod: But this isn't home. This is the Premier's office of the largest province in one of the best democracies in the world—

Mr. David Nicholl: Absolutely, but we're talking about knowledge.

1520

Ms. Lisa MacLeod: You allowed a password to be created for an individual who then passed it off to another individual to allegedly wipe hard drives and emails clean in probably one of the largest political scandals in this province's history. You're the guy who did that.

Mr. David Nicholl: And we very, very carefully ensured that the accountable person is the chief of staff.

Ms. Lisa MacLeod: So you think that he should be charged with breach of trust, then.

Mr. David Nicholl: The accountable person is the chief of staff. The memo I sent went to the chief of staff. It didn't go to 75 individuals in the Premier's office. It didn't go to some guy. That's not what we did. We made sure that the chief of staff was the accountable person.

Ms. Lisa MacLeod: As the head of the cybersecurity unit and now a person who's involved here with this ITO and the OPP investigation, obviously, there are a lot of eyes on you. I'm going to be honest with you: The ITO doesn't look good for you. I'm glad that you're here and I'm glad that you're taking our questions.

But I want to talk a bit about the Information and Privacy Commissioner of Ontario. Ann Cavoukian released an initial report stating that documents in the Premier's office had been destroyed. In your role in cybersecurity, you would have someone in charge of that, but you are ultimately responsible. Did you at any time initiate an internal review on those destroyed documents?

Mr. David Nicholl: I'm going to have to be a little more careful.

Ms. Lisa MacLeod: I would start with telling the truth.

Mr. David Nicholl: The IPC were looking at emails specifically. We certainly worked with the IPC on some of the logic or the process and the format behind that. It wasn't till you guys here started to ask for the emails—that's when we actually got into using our cybersecurity people to go and find them. We actually found the emails for you to gather.

Ms. Lisa MacLeod: Okay. Did you ever tell Ann Cavoukian it was you who provided this super-access password?

Mr. David Nicholl: I didn't. I got the direction from Cabinet Office to implement their desire to meet the needs of the Premier's office's records schedule. That's what I did.

Ms. Lisa MacLeod: Why didn't you tell that to us, the committee, or to Ann Cavoukian at any time? Why would you withhold that information from not only the Information and Privacy Commissioner but also this legislative committee that has had you in now for a third time?

Mr. David Nicholl: I'm actually trying to remember the conversations that we had with the commissioner. There definitely was conversation with the commissioner on a phone call. I remember in her testimony I think she mentioned the fact that there had been a call from the Premier's chief of staff. I'm just going by memory here, so don't hang me if I'm wrong.

Ms. Lisa MacLeod: I'll try not to.

Mr. David Nicholl: I'm almost sure she did, that we did talk about this, Ms. MacLeod. Honestly, I am. I'd need to go back and check, but I'd like to almost believe that I did, and there was a good discussion on it. Without a doubt, I'm sure that caused her to ask more questions.

Ms. Lisa MacLeod: Okay. Let's go back to the ITO for a moment, because I do have a question I need to ask you with respect to timing. On March 19, 2013, Emily Marangoni, the deputy director of human resources, informed one of your staff, Thom Stenson, the manager of information technology services, to remove special administrative rights for Wendy Wai after they were given to her—a delegated authority, according to you. How did she know that Wendy Wai had administrative rights, how did she know to have them removed and why did she do that on March 19?

Mr. David Nicholl: I have no idea.

Ms. Lisa MacLeod: Why?

Mr. David Nicholl: I would have had no involvement with the Premier's office.

Ms. Lisa MacLeod: If you gave the administrative right, why wouldn't you know—

Mr. David Nicholl: I would have no involvement with the Premier's office. I would never have been involved in that. That would have all been done through Cabinet Office. That's not my—

Ms. Lisa MacLeod: So who in the Cabinet Office would have been responsible? Peter Wallace?

Mr. David Nicholl: No, I doubt very much if the secretary of cabinet would have been involved in that.

Typically, the control for all of the PCs in the Premier's office—that's why I don't have the authority to touch them—would always go through the CAO within Cabinet Office. Sometimes through transition times the CAO of Cabinet Office very much controls what we do as—

Ms. Lisa MacLeod: Right. But Peter Wallace is basically saying in the ITO that he was surprised that you granted this access and it went ahead. Are you the fall guy for Peter Wallace in this?

Mr. David Nicholl: I don't think so at all. I think that it's very, very clear in the—I have not gone through this.

Ms. Lisa MacLeod: It's probably a good thing for you to do that.

Mr. David Nicholl: Maybe someday I will. Maybe I'll just let it sit for a while, just to let some of the rawness leave, to be quite honest with you.

Ms. Lisa MacLeod: I'll just paraphrase a few things here. You've got a couple of your colleagues—

Mr. David Nicholl: I'd like to answer first.

Ms. Lisa MacLeod: —both your subordinates and you—

Mr. David Nicholl: Can I answer first, on the Peter thing, on the secretary of cabinet question?

Ms. Lisa MacLeod: Yes, please. Go ahead.

Mr. David Nicholl: There is, to me, a very, very clear line of actions that happened that end up in us delivering the admin rights to the Premier's office. It starts with the phone call that I had from Cabinet Office on the 31st, the morning, informing me that the rights will be provided and that I am to receive a phone call at 2 p.m. in the afternoon from the Premier's chief of staff. That's what I'm told.

Over the next couple of hours, I received a couple of emails from Cabinet Office legal counsel with the legal memo that I am to both read out to the chief of staff and then to actually send to the chief of staff. Then, at 2 o'clock, he called me; the chief of staff actually called me. I didn't set that meeting up with the chief of staff, so clearly there was a meeting set up with the chief of staff to call Nicholl, Nicholl knew it was coming, so I had actually booked my meeting myself and I asked my ministry legal counsel to come and sit with me. I think he had been involved also in helping to craft that legal memo. I read out the memo and I sent the memo.

Ms. Lisa MacLeod: Okay. I've got two seconds left, I think.

The Chair (Mr. Shafiq Qaadri): You have three minutes, Ms. MacLeod.

Ms. Lisa MacLeod: I have three minutes.

The Chair (Mr. Shafiq Qaadri): Three and a half.

Ms. Lisa MacLeod: Okay. I appreciate how difficult this must be for you, but I must say, I need to read this into the record. It is on page 18 of the ITO and it says this: "David Nicholl, the corporate chief information officer, also claimed that he was not aware of the distinction between the global administrative right assigned to Wendy Wai and the usual local administrative right."

This is you: "Admin rights are something more than we have just as ordinary users. It gives you a bit more

ability um was there a difference between the admin rights that the "six (6) or seven (7) had versus the one (1) I would say no," it's not "the same thing."

The OPP says this: "I believe that this comment is misleading since Mr. Nicholl is the one who approached Thom Stenson and Rolf Gitt, from the information technology services, and described the administrative right required by David Livingston. Even though Mr. Nicholl denied making such request to the above individuals, Mr. Stenson and Mr. Gitt both confirmed that the meeting occurred. They even explained to Mr. Nicholl that the request was unusual and difficult to implement."

You said one thing to the OPP. You've now said several different things in this committee and you have two of your staff effectively going to the OPP with an alternative story to the one that you have presented to them. I'm sorry, but you're in charge of the cybersecurity unit of the IT services here at Queen's Park and that is very incredibly important. How are we supposed to trust you in that job on a go-forward basis?

Mr. David Nicholl: I don't even know how to approach this. I absolutely had a meeting with my tech guys following the meeting with Cabinet Office on that 30th morning. There's no issue I had a meeting with them.

When I got the question initially from the OPP, the interview was—I'm going to be brutally honest with you. It was reasonably jumbled for me in that I was coming in to talk about the email system and I ended up talking about admin rights. I hadn't prepared at all, so I completely admit I was probably a bit of a babbler and I did not do a particularly good job.

The very next day I called the OPP back and said, "Guys, I did a horrible job yesterday." I've got a notebook. I kept all this as I went along—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. David Nicholl: I did have the meeting, I absolutely had the meeting with my technical staff, and we talked about what the requirement was—

Ms. Lisa MacLeod: So you told the OPP to change their document, that you actually acknowledge—

Mr. David Nicholl: I can't tell them to do that. All I can do is give them supplementary stuff. I told them, "Look, here's the order of"—

Ms. Lisa MacLeod: I just have 30 seconds left. I'm sorry, I appreciate it, but this is a pretty serious committee. You are under oath here. This is not only a message to you but anybody else who has appeared before this committee: We take our work very seriously—

Mr. David Nicholl: As I do.

1530

Ms. Lisa MacLeod: You are under oath. I would expect that people wouldn't try to perjure themselves to keep us from getting to the truth—and I'm not just speaking to him.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod—

Mr. David Nicholl: Please do not assume—I am not perjuring myself here in any way, Ms. MacLeod—not at all.

The Chair (Mr. Shafiq Qaadri): Thank you. Thank you, Ms. MacLeod, for your questions.

I'd just respectfully remind all committee members that we don't generally engage in any forms of threat—and/or hanging, by the way—by this committee.

I now present to the NDP. Mr. Tabuns, you have your 20 minutes.

Mr. Peter Tabuns: Thank you, Chair. I'll be sharing my time with my colleague.

Mr. Nicholl, welcome back.

Mr. David Nicholl: Thank you.

Mr. Peter Tabuns: Your phone meeting with David Livingston on January 25: What exactly did he ask you for, again?

Mr. David Nicholl: Right. He talked about deleting email accounts, so it goes back to the previous testimony I gave here. He had asked very specifically about—he was concerned that when people left a Premier's office, email accounts were left on, and then they'd return two years later and the email account—remember, we had that discussion.

Mr. Peter Tabuns: Yes, I remember that.

Mr. David Nicholl: The second piece of emails he talked about was—actually, no. In the January 25 call, that was it. He didn't go on to the email deletions, because he did that the previous time.

The second bit of his call was concerning that he wanted administration rights for Premier's office PCs so he could clean out the hard drives.

Mr. Peter Tabuns: So he was asking for access so he could not only delete email accounts, so that he wouldn't get what he expressed was this problem with email accounts still accumulating email, but he also wanted to delete other records on the hard drives. Is that correct?

Mr. David Nicholl: Correct. You need to split those two up. Again, as I said before, email accounts and admin rights—not connected. Email accounts are done through a process in the back office. We would take a request through the Cabinet Office CAO and they would be accountable for looking after email accounts. There is no admin right/email account connection at all. Where the admin right is required is to go in and clean the hard drives, yes.

Mr. Peter Tabuns: So clear out all records, all documents, on the hard drive. You've got 20 folders, you can go through and just clear them all out.

Mr. David Nicholl: Absolutely, yes. If you had saved emails to a file folder on your hard drive, that would be included.

Mr. Peter Tabuns: Correct.

Mr. David Nicholl: But typically, your emails are stored back on the exchange server.

Mr. Peter Tabuns: So he was asking you for access to these computers to wipe out all documents—to give him the power to wipe out documents, the power to clean out any file folders that might have archives of older emails. At the same time, did he say to you, "I need you in back office to discontinue these email accounts"?

Mr. David Nicholl: Yes. When it comes to email accounts, I would have directed him right to the Cabinet Office CAO, because they are the ones who look after the whole process. Managing Premier's office email accounts is with the Cabinet Office CAO.

Mr. Peter Tabuns: Did he explain why he needed this special access?

Mr. David Nicholl: He explained that he wanted to wipe hard drives.

Mr. Peter Tabuns: And?

Mr. David Nicholl: In order to prepare for the new team coming in. He wanted to leave—he didn't want—that's what he said.

Mr. Peter Tabuns: All right.

Mr. David Nicholl: I would be guessing what the reason would be, so I shouldn't do that.

Mr. Peter Tabuns: And did this seem strange to you?

Mr. David Nicholl: I'll be very honest with you. In isolation, it's a perfectly normal thing to want to clean your drawers out before you go—absolutely, totally normal. But honestly, having read the secretary of cabinet's points around some of the discussion that he had—the timing, what was going on—I think what the secretary of cabinet said was, "You might want to think about how this comes across."

But I didn't have—that's not my thinking.

Mr. Peter Tabuns: It did not seem strange to you at the time, but in retrospect, you could see there were a lot of overtones?

Mr. David Nicholl: I think that is very true.

Mr. Peter Tabuns: Okay. That's fine. So is this special access something that's normal in a transition? You had said, in answer to earlier questions, that the Cabinet Office normally takes tight control when there's a transition.

Mr. David Nicholl: Definitely.

Mr. Peter Tabuns: So what's the normal process that we should be aware of?

Mr. David Nicholl: Great question. In fact, one of the questions I have pushed at a little bit was what happened in 2003—

Mr. Peter Tabuns: Yes.

Mr. David Nicholl: —because I was just kind of curious to know, did we go through this in 2003? Now, in fairness, in 2003 things probably weren't quite as electronic as it would be today. In 2003, to the best of my knowledge and what I could find out, the hard drives were actually removed from the machines and actually stored in a cupboard for eight years.

Now, we don't know what happened to the hard drives before they were taken out, so I cannot comment on whether somebody wiped the hard drives before; I have no idea. But I know that, physically, the drives were taken out of the machines, they were stored and then they were destroyed.

There are machines you have for destroying hard drives. It's just like a big hammer and it drives a bolt right through the middle of the hard drive. I believe, from

what I can understand, that's what would have happened in 2011 to destroy the 2003 hard drives. That's the only parallel I've got.

Mr. Peter Tabuns: Would you have expected that it was the IT staff employed by the Ontario public service who would actually do any work on hard drives?

Mr. David Nicholl: I think I would.

Mr. Peter Tabuns: I'm sure you must have had requests from people who left a position as a minister, moving on to another ministry. Did they come to you or did their chief of staff come to you and say, "We're moving on. We need to have things cleaned up"?

Mr. David Nicholl: They would go through their deputy's office to do that, honestly. Similar to the Premier's office records schedule, there are ministers' office records schedules. They have to be very careful as well to ensure that they are keeping the records they need to keep of government. That's what this is all about. That's why they do it.

Mr. Peter Tabuns: I think what I've established is that when there's a transition, typically, civil servants employed in information technology are given the responsibility for dealing with all of the hardware and software.

Mr. David Nicholl: More the hardware than software. The actual records management typically would reside and would be based on records schedules, but actually more likely performed by a deputy minister's office, working with the minister's office staff.

Mr. Peter Tabuns: You didn't have outside people—it was not normal practice for outside people to come into a minister's office and wipe out the hard drives?

Mr. David Nicholl: No.

Mr. Peter Tabuns: Okay. There's a point you were referring to, and it didn't follow my flow of questions, but I just want to go back to it. You had talked with Mr. Livingston prior to the 25th about clearing out emails. I believe, in an earlier testimony, he had asked you about backup tapes and just making sure things were gone.

Mr. David Nicholl: Yes.

The Speaker (Hon. Dave Levac): Can you just refresh our memory on that?

Mr. David Nicholl: Yes. This was in August 2012. I was sent to the Premier's office, and I met with—actually, it was the name that Ms. MacLeod just mentioned. I think the name of the person—

Mr. Peter Tabuns: Steen Hume?

Mr. David Nicholls: No, no. Emily, I think, was the name—

Mr. Peter Tabuns: Marangoni.

Mr. David Nicholls:—who was an administration person, I think, within the Premier's chief of staff office. I met with the chief of staff. He asked me—this was the conversation about, first of all, "Email accounts are still around after people have left. For goodness' sake, why can't we get a process that gets rid of those email accounts?" That was very much a cabinet office CAO function, and they cleaned all that up.

But then he did ask, "How do I delete an email?" We had that discussion on an email—you delete an email, it

goes into the deleted folder; you delete the email in the deleted folder and, in theory, it's deleted. His backup in the Premier's office at that time—it's changed now, but at that time it was a daily backup kept for two weeks. If he did the double-delete overnight, we would capture the backup that night.

Mr. Peter Tabuns: And he was curious to know how to ensure that it was absolutely deleted? Is that correct?

Mr. David Nicholl: I think that's why he asked.

Mr. Peter Tabuns: Okay. One question before I turn it over to Mr. Singh. The Information and Privacy Commissioner, in her initial report, Deleting Accountability, wrote:

"Indeed, when it became apparent that the former Premier's office was preparing to decommission the email accounts as part of the transition, I was advised that the" Ministry of Government Services "IT group took immediate steps to secure the email accounts in the former Premier's office to ensure that the records in those accounts, as of that date, were preserved." Is that correct?

Mr. David Nicholl: Yes, at the request of Cabinet Office.

Mr. Peter Tabuns: So all of those emails were preserved?

Mr. David Nicholl: Anything that was left at that time was preserved, yes.

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Mr. Peter Tabuns: Sorry, left after the computers had been wiped? Before January 31 or after February 7?

Mr. David Nicholl: I don't know. But don't forget, the wiping of the hard drives would not affect the email and the email accounts. The email accounts are on a server, an exchange server. Admin rights have no connection back to a server at all. They couldn't delete emails using an admin password unless it was locally stored.

Mr. Peter Tabuns: So everything that was stored centrally was preserved?

Mr. David Nicholl: Yes. I think I'm safe in saying yes.

Mr. Peter Tabuns: Everything that was on those computers before January 31 was preserved?

Mr. David Nicholl: I think we need to get our—I don't know the dates. Honestly, Mr. Tabuns, I don't know the dates when the Cabinet Office would have held them, but I'm sure we can get those dates. I think it was in prior testimony; I'm almost sure it was. I just don't know what it is.

Mr. Peter Tabuns: Okay. I'll turn it over to Mr. Singh, and I'll be back.

The Chair (Mr. Shafiq Qaadri): Mr. Singh.

Mr. Jagmeet Singh: Thank you, sir. How much time do I have, sir?

The Chair (Mr. Shafiq Qaadri): About 10 minutes.

Mr. Jagmeet Singh: Thank you.

Sir, thank you for being here today. I just want to go back to the last point, on what was stored in the computer. I think what you said was—and correct me if I'm wrong—that emails are stored on the exchange server. So

if emails are kept locally, those would be destroyed or deleted if they were on the hard drive and stored locally, but the emails that are stored on the exchange server would still be on the exchange server.

Mr. David Nicholl: Correct.

Mr. Jagmeet Singh: Is that what I understand?

Mr. David Nicholl: Yes.

Mr. Jagmeet Singh: Are you aware if there is a way or there is a method of deleting emails from the actual exchange server?

Mr. David Nicholl: Yes. So, again, basically, your email system has two parts: the client and the exchange server. When you tell the client to delete, it's actually working with the exchange server at the back.

Mr. Jagmeet Singh: Right.

Mr. David Nicholl: If you do a double delete and it doesn't get caught in a backup tape, it's gone. It's gone on the exchange server as well.

Mr. Jagmeet Singh: And the backup tape—was that the system you talked about where, after a certain period of time, some emails automatically get dumped into a secondary storage, and when they're in a secondary storage, even if they're double-deleted, there would still be a copy of them. Is that correct?

Mr. David Nicholl: Not quite, sorry. We just have to get really accurate on it.

Mr. Jagmeet Singh: Sure. Get accurate.

Mr. David Nicholl: Again, the first 30 days are primary storage on your email account. Then it automatically drops into secondary storage—cheap storage, effectively. It's not tape; it's not archive. It's just literally all the emails. It's just a cheaper place to store it. It's not connected to backup tapes at all. Okay?

Mr. Jagmeet Singh: Got it. But that secondary storage is still available, still retrievable?

Mr. David Nicholl: Absolutely. Oh, yes. It's on your email. That's what you see when you go to your email. More than 30 days, it's coming from the secondary vault.

Mr. Jagmeet Singh: Okay. I'm going to ask you some questions now about Mr. Faist and Ms. Miller. I think you said this already, but let's just make sure it's clear. Do you know who Mr. Faist is?

Mr. David Nicholl: I do not.

Mr. Jagmeet Singh: Okay, but you've heard about his name, obviously, through these discussions and through the newspapers now.

Mr. David Nicholl: I have really been trying not to read the newspapers recently but, yes, I have heard his name mentioned.

Mr. Jagmeet Singh: Fair enough. So if you don't know him, you've never met him before. Is that correct?

Mr. David Nicholl: Never.

Mr. Jagmeet Singh: Okay. Have you ever had an opportunity to meet Ms. Laura Miller?

Mr. David Nicholl: To the best of my knowledge, no.

Mr. Jagmeet Singh: Okay. I'm going to take you back. I want to understand what happened when you were approached by Mr. Livingston. When Mr. Livingston made this request to you, you said that you

were not in the position to do this—you did not have the authority to make this decision—and the decision was then put to the secretary of cabinet, Mr. Peter Wallace. Is that correct?

Mr. David Nicholl: It went to Cabinet Office, yes.

Mr. Jagmeet Singh: It went to Cabinet Office, and you're not sure who it went to, specifically. You said you were not in a position to deal with that request.

Mr. David Nicholl: Correct.

Mr. Jagmeet Singh: Now, after that was there anyone else that you spoke to about the fact that Mr. Livingston had come to you with this request? Did you speak to any of your colleagues? Did you speak to any of your friends? Did you say, "Hey, listen, this is a bit odd. Mr. Livingston came to me and asked me for this password, something that I didn't have the authority to do. That was a bit odd." Do you remember speaking to anyone about that?

Mr. David Nicholl: I don't.

Mr. Jagmeet Singh: But did you feel it was odd, when he came to you?

Mr. David Nicholl: I had only received probably one or two calls ever from a Premier's chief of staff, so—yes. I don't normally get calls from the Premier's chief of staff.

Mr. Jagmeet Singh: Okay, so it struck you as something that was maybe not profound but something that was quite serious or quite significant, because it's not a call that you would get every day.

Mr. David Nicholl: It was something—I felt very comfortable in saying, "I have no authority to do this. You need to go to talk to Cabinet Office." I was very, very comfortable doing that.

Mr. Jagmeet Singh: But do you recall speaking to anyone else about that, the fact that you got a call from the Premier's office?

Mr. David Nicholl: No.

Mr. Jagmeet Singh: You don't? Okay. As an acting deputy of government services, how often do you speak with Minister Milloy?

Mr. David Nicholl: I'm no longer acting deputy—

Mr. Jagmeet Singh: Right. At the time.

Mr. David Nicholl: We met once a week to go through any kinds of issues that we had.

Mr. Jagmeet Singh: Okay.

Mr. David Nicholl: I probably would have had—I think I was there for maybe three or four weeks, so I could have had three meetings with him.

Mr. Jagmeet Singh: Okay. Do you have interactions with other staff from the Premier's office or staff from the Cabinet Office as well?

Mr. David Nicholl: I would definitely have interactions with Cabinet Office staff, for sure, yes. I definitely do not have contact with Premier's office staff, unless—look, there's been a couple of instances in the past where usually it's that we're not doing something quick enough, and you may get a call saying, "Hurry it up." But it's very seldom—very, very seldom.

Mr. Jagmeet Singh: So specifically having a call from the chief of staff was quite significant, but anyone else from the Premier's office staff, generally speaking—did you receive communications from them?

Mr. David Nicholl: No.

Mr. Jagmeet Singh: Okay. You mentioned that you didn't necessarily recall speaking to anyone about Mr. Livingston's request to you. That being a big deal, you didn't talk to anyone about it. But did you ever discuss this notion of an administrative right or a special administrative right? Did you ever discuss that with any of your colleagues or anyone in the workplace?

Mr. David Nicholl: No. At that time, we didn't. It was only—because to be honest, I didn't know what was going to come of this. It could have disappeared and never been heard of again. What he was asking for was a requirement. He wanted to be able to wipe hard drives. We had a requirement, which is a much clearer thing than to say, "Okay, how does that translate?" But no, I didn't, because honestly, I really didn't know what was going to happen with it.

Mr. Jagmeet Singh: Okay. You mentioned before that you've interacted with the OPP as your clients.

Mr. David Nicholl: Yes.

Mr. Jagmeet Singh: You were also interviewed by the OPP in relation to this information—

Mr. David Nicholl: Yes, I was, which I felt very uncomfortable talking about last time, as you know.

Mr. Jagmeet Singh: That's fine. Did you speak to anyone about that, that you were interviewed by the OPP when—first, did that happen at your office?

Mr. David Nicholl: Yes, it did.

Mr. Jagmeet Singh: Did they come in in plain clothes or did they come in as officers in uniform?

Mr. David Nicholl: Just to be clear, when they came, I was all g'd up to do a full email presentation to them, so I was a little—I'll be honest: I was a little surprised by launching into the admin right discussion. That's what I said. That's why I went back the next day and said—

Mr. Jagmeet Singh: Sure, no problem. How did they arrive?

Mr. David Nicholl: Plain clothes.

Mr. Jagmeet Singh: Plain clothes. Okay.

Mr. David Nicholl: Absolutely, yes.

Mr. Jagmeet Singh: And they identified themselves with a badge or appropriate identification?

Mr. David Nicholl: Oh, yes. Absolutely, yes.

Mr. Jagmeet Singh: And after that, were you by yourself when you were having that discussion with the OPP investigators or did you have someone with you?

Mr. David Nicholl: No, I was all on my own.

Mr. Jagmeet Singh: Okay. Afterwards, did you speak to anyone about that, the fact that the OPP had asked you some questions and had interviewed you?

Mr. David Nicholl: No, but honestly, I literally called them the next day and said, "I really don't like what I—I'm not sure what I told you was very good and very clear"—

Mr. Jagmeet Singh: Which is fine.

Mr. David Nicholl: —and I actually said, "Can I send you—I've got notes. I've written notes as I went along through this process. Can I send you those notes and say, 'Met this person, met this person, met this person?'" So I literally—

Mr. Jagmeet Singh: I'll get to that. I'm more than happy to hear about that. But the day that the OPP came in and spoke to you, did you afterwards say to one of your colleagues, did you say to anyone, "Hey, I was just interviewed by the OPP and that was really stressful. That was a big deal. Wow, I didn't expect it to come out that way." Just, you know—

Mr. David Nicholl: I told my wife how stressful it was, and that's probably the only person I should speak to about it.

Mr. Jagmeet Singh: No, no. Of course. That's fine. But anyone in the office—did you mention it to anyone in the office?

Mr. David Nicholl: I don't believe so.

Mr. Jagmeet Singh: Would anyone in the office have noticed you going into where those two individuals—how many individuals were there, actually, who came to interview you?

Mr. David Nicholl: There were three.

Mr. Jagmeet Singh: Three. And I'm assuming they were all men, three men?

Mr. David Nicholl: Yes.

Mr. Jagmeet Singh: Three men came into your office—

Mr. David Nicholl: Well, we had a boardroom.

Mr. Jagmeet Singh: You had a boardroom. The three men came into your boardroom. Did anyone make note of asking who they were or did they notice that there were three of them, that they came in together?

Mr. David Nicholl: From?

Mr. Jagmeet Singh: Your staff or anyone in your office in general?

Mr. David Nicholl: Oh, I'm sure my—the admin staff might have seen them. But don't forget, I had already talked to some of them before because I was kind of involved a little bit already—

Mr. Jagmeet Singh: Sure.

Mr. David Nicholl: —because I was actually helping to coordinate some of the stuff for them. I actually knew their names. I talked to the inspector before. It wasn't cold.

Mr. Jagmeet Singh: I don't think I have enough time for my next series of questions, so I'll wait till the next round.

The Chair (Mr. Shafiq Qaadri): Oh. Thank you, Mr. Singh. To the government side: Mr. Del Duca.

1550

Mr. Steven Del Duca: Thanks very much, Mr. Chair, and good afternoon, Mr. Nicholl. Thank you for being back here before the committee for a third time.

There's been a lot of information that's obviously been shared throughout the questioning today, lots of dates, so I'm going to go over some stuff that in some cases may seem like we're going back over some familiar

territory. If I get anything wrong—because there has been so much information—feel free to let me know.

I know that your previous appearances before this committee were by virtue of your assistance at the time with Mr. Costante.

Mr. David Nicholl: Yes.

Mr. Steven Del Duca: We did have an opportunity on those other occasions to ask you a lot of questions, and I'm frankly not planning to spend any time revisiting the questions that you've already been asked.

When the Premier appeared before this committee—Premier Wynne, that is—she shared with us that under her watch she has opened up government to an unprecedented degree. A big part of this particular mandate includes new training practices for political staff, issued under the direction of the Premier, and these new training practices were directly impacted by what the Information and Privacy Commissioner had to say in her report. The Ministry of Government Services, of course, will serve as a broad overlay to these new training mechanisms and document retention practices.

As was confirmed last time and through a number of correspondences, a number of letters etc., with this committee, as well as with the integrity commissioner herself, the Ministry of Government Services acknowledged that there were some unforeseen circumstances that resulted in the failure to recover some responsive emails, not as a result of political interference per se but rather because of a technical oversight which was not known at that time. We also know that as soon as the issue was identified, the Ministry of Government Services staff worked very hard to remedy the situation and ultimately turned over all documents that had fallen into what was referred to last time as the Enterprise Vault. I think I—

Mr. David Nicholl: Orphaned.

Mr. Steven Del Duca: Sorry?

Mr. David Nicholl: The orphaned Enterprise Vault.

Mr. Steven Del Duca: Thank you very much for clarifying that.

During Mr. Costante's first appearance here at committee, he said:

"There was no intention to mislead or not inform the privacy commissioner. I met with the staff who provided information and asked them that very question. I was assured by all of them that there was no intention to mislead her.

"Having said that, we have taken responsibility for the mistakes."

Then, in response to how the staff had responded based on the policies and procedures that were in place at the time, he said, and again I want to quote, "There were records, and when we then looked into the system, as a result of the motion from this committee, we found them. Obviously, that was a mistake on our part. We should have verified, not just responded on the basis of what our policy was. That's, again, why we've apologized to the privacy commissioner. We should have done more." That was Mr. Costante.

So can you confirm for the committee today that, to your knowledge, during the ongoing IPC investigation

the Ministry of Government Services never intentionally left out any information that was relevant to the work of the integrity commissioner on this particular issue?

Mr. David Nicholl: I can absolutely confirm that. It was a really dark day for us, frankly, when we found that we had missed informing her of the role of the Enterprise Vault, and whenever we'd find I believe it was the Minister of Energy's chief of staff's emails in an orphaned vault, it caused quite a lot of consternation and immediate phone calls to the IPC and to the OPP, and certainly we had lots of briefing notes to write for our deputy, yes. But it was an incredibly genuine oversight.

You know, when you put a serious techie in front of perhaps people who aren't as technical, the questions from the non-technical people don't necessarily draw out what you need to do to get the full picture, and it's a problem with question-and-answer as opposed to presentation. That's why, frankly, we spent a full day in Guelph with nine staff members from the IPC, and we said, "You can ask questions, but only as we present." We literally spent a day presenting, "What does our email environment look like?" and that's how we got to all of the detail behind some of the crazy things that happen inside Microsoft Exchange that, frankly, unless you're living and breathing it every day, you're just not going to know. We've talked about that here. We talked about things like synchronization folders. Who knew there was a ton of emails sitting in synchronization folders? No one would ever have volunteered that.

Mr. Steven Del Duca: Right.

Mr. David Nicholl: So I do think it was a very, very genuine oversight. We apologized profusely for it. We still do. But when you guys come along and ask us to go and find the emails for person X, we literally go technically and look for, "Give me all the emails for person X." That's why we found, for instance, the energy chief of staff's orphaned Enterprise Vault at that time: because it actually found it on the disk. It was just a different approach, a very different approach.

Mr. Steven Del Duca: Thanks very much for that answer. I'd like to talk to you a little bit now about the ITO in which your name, among many other names, including members of the opposition caucuses, has been mentioned. Last week, Constable Duval testified before this committee and discussed this document in detail. While he was here, he confirmed the fact that when an individual's name is listed in an ITO, this does not mean that they have committed a crime or that they have engaged in any wrongdoing. In fact, Constable Duval made it very clear that the investigation was into allegations against the former chief of staff to the former Premier. He stated that the investigation is centred on the action of Mr. David Livingston only.

In addition to fully co-operating with the OPP and their investigation into Mr. Livingston, this is the third time, as I've said, that you have voluntarily appeared before this committee. Constable Duval also commented on the full co-operation that individuals in the government have provided to the OPP. He stated, "It is my

understanding, however, that the OPP has received co-operation from senior government officials in this matter.”

Can you just confirm with the committee—you may have said it earlier in testimony or in your opening statement—that you have fully co-operated with the OPP investigation?

Mr. David Nicholl: I have absolutely fully co-operated with the OPP investigation. In fact, I think I’ve gone further in that I’ve actually helped them run parts of their investigation when it was back within the OPS.

Can I just say also that my relationship with the OPP is very, very deep. I have had the privilege to work with those guys now for 12 years. I very proudly stood with one of the previous commissioners, Commissioner Chris Lewis, when we fought through some pretty tough stuff on their current radio system. He taught me very clearly the importance of radio systems when it comes to police officers, which I would have never known otherwise: “When they press a button on their radio, it has to work, Dave.” There is no room for error.

As we’ve gone through this latest—I mentioned in my opening notes that we’re just starting this absolutely ginormous replacement of the public safety radio network. It is a huge project. It’s the largest project that we will do in government by far. Through probably now four or five appearances at treasury board and, in fact, at full cabinet, I’ve had the OPP right beside me doing that. I have a full-time OPP officer working for me on the public safety radio network system. I just want to say, I’ve got serious respect for these guys. They are the best.

Mr. Steven Del Duca: Thank you for that.

According to the ITO, you were approached by Mr. Livingston in January 2013 and asked if the Premier’s office could obtain an administrative right to clean hard drives. I think we’ve gone over that territory a bit. Was Mr. Livingston the only individual to make this request?

Mr. David Nicholl: Yes, he was.

Mr. Steven Del Duca: What was your understanding of why Mr. Livingston requested this access?

Mr. David Nicholl: My understanding was that he wanted to wipe clean hard drives to prepare for the new Premier’s office team coming in.

Mr. Steven Del Duca: So at the time Mr. Livingston made the request, he was chief of staff to the former Premier, Dalton McGuinty. Is that correct?

Mr. David Nicholl: Yes.

Mr. Steven Del Duca: So when he made that particular request, it was not on behalf of Premier Kathleen Wynne or the current Premier’s office. Is that correct?

Mr. David Nicholl: I can only say it was him calling me. Honestly, he didn’t go into—I’d be speculating; I can’t.

Mr. Steven Del Duca: Just to be clear, though, he was the chief of staff in the former Premier’s office at that time.

Mr. David Nicholl: Yes, he was.

Mr. Steven Del Duca: Okay. Thank you very much.

I do understand that there was a meeting on January 30, 2013, in which Mr. Livingston’s request was discussed and that you have a different recollection or interpretation, whatever the case may be, of the decision that was made during that meeting.

Mr. David Nicholl: Can I comment on that?

Mr. Steven Del Duca: Sure. Please.

Mr. David Nicholl: Honestly, there is no misunderstanding whatsoever. I am hoping, in a way, that it was a miscommunicated quote, but what I said was that we talked about approving the admin rights. I did not walk out of there, as I said in my opening statement, with any idea that I had been directed to go and do it—absolutely not, not at all.

Mr. Steven Del Duca: That’s fine, and I appreciate you clarifying that.

I’m wondering, can you say definitively that the information that may have been removed from the computers in question was responsive to the request for documentation made by this committee?

Mr. David Nicholl: I have no knowledge whatsoever—none—to add to that. I just cannot—I have no clue.

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Mr. Steven Del Duca: Okay.

The Chair (Mr. Shafiq Qaadri): I’d also just remind committee members that these hypotheticals and speculatives are (a) generally not tolerated, and (b) obviously the witness can answer as he sees fit.

Go ahead.

Mr. Steven Del Duca: Thanks, Mr. Chair.

Even though you commented that you try to avoid reading newspapers, or that at least at the current time you’re avoiding that, as I’m sure you’re aware, the opposition has alleged that your actions were motivated by a supposed friendship with Mr. Livingston. I know you’ve gone over this terrain already here today. I think it is important to make sure that this is very clearly understood. In fact, at a recent press conference, Ms. MacLeod alleged that you had “David Livingston’s best interests in mind, not the public’s interest.”

Those are very serious allegations. I just want to give you the chance again to respond to these statements and this notion of the friendship with Mr. Livingston—the alleged friendship with Mr. Livingston.

Mr. David Nicholl: Honestly, the best I can do is refer you back to my opening notes. I spent a fair bit of time in making sure that I put honesty on the page. Honesty is the best way through this. There was no friendship at all.

Mr. Steven Del Duca: So no friendship, and I know you’ve said that multiple times today, which is great, but I’m just wondering whether or not whatever relationship you may or may not have had with Mr. Livingston—has any of that ever affected any of the actions or decisions that you’ve ever made as an employee of the OPS?

Mr. David Nicholl: No. Look, when he called, my answer was, “I do not have the authority to do that. Go talk to Cabinet Office.”

Mr. Steven Del Duca: If it's not too difficult for you, could you perhaps discuss with committee what the impact has been of the attacks that you've received over the last couple of weeks, what that's meant for you?

Mr. David Nicholl: It's not been overly—look, I'm an IT guy. IT guys don't normally get—we kind of hide behind business and then business is upfront. You guys come first, business comes second and we're third. So yes, it's a pretty unusual occurrence for an IT guy to be out front. It is.

Mr. Steven Del Duca: Sure. What kind of an impact has that had on you, being out front and being attacked the way that you have?

Mr. David Nicholl: Well, I don't know if I've been attacked because, seriously, I really haven't read the stuff, but there's been some impact, yes. I was the interim deputy for a while and they brought the new deputy in a little quicker. There have been some changes made as far as my responsibility is concerned. So yes, of course it's had an impact on me. Yes, it has.

Mr. Steven Del Duca: Thank you. I want to talk to you and ask you some questions about what the routine is like when you're dealing with emails, documents etc. after a change in employment. I want to start by saying that with respect to the issue of IT deleting of email accounts, the practice of deleting accounts after a staff person leaves government on both the political and the public service side, that's not new. That's not a new phenomenon, is it?

Mr. David Nicholl: No.

Mr. Steven Del Duca: No. And with respect to electronic devices, I would assume that it would be common practice to clear those devices after staff depart so that they are ready to be used for new and incoming staff?

Mr. David Nicholl: Yes, it is, though it's important to note—and it's the same thing as we talk about in the Premier's office records schedule. It's really, really important that staff, as well as political staff, understand that they've got the same responsibilities that anyone else does, that you guys have. It's really important that especially for things like outstanding FOI requests or outstanding litigation holds, records are not deleted, if those exist.

Records management is a science; let's be honest. It's a continual education for people to understand what they need to do. I think that's a constant challenge, both educating political people as well as educating professional OPSers—spending a lot of time on it, an awful lot of time on it.

Mr. Steven Del Duca: Okay, so let's explore that a little bit more and let's talk about the new rules that exist now for record-keeping and other open government initiatives.

Obviously, having worked for the Ministry of Government Services for some time, I think it would be fair to say that you've seen a series of significant changes over the last number of months respecting how the government will now handle the processes and the practices of document management and retention going forward—that science that you referred to a second ago.

Since your last appearance, a number of current Liberal staffers have been called to testify before the committee. We have consistently asked them whether or not they've been trained on these new initiatives under the new government. We've received, I think, very positive feedback from the IPC, and she's been quoted as having said things like, "This government, with respect to my investigation and the work that we have done with the government, has been very forthcoming." She also said, "Any co-operation we needed was there." She also said, "We've had very good feedback from the government."

After all is said and done, the changes that this government is implementing today and over these last number of months will impact the future to ensure that government doesn't find itself again in the same situation. I want to ask you if you could reflect with the committee today on some of the changes you're aware of and what your thoughts are regarding those changes with respect to the new approach to the Open Government initiatives that have been established.

Mr. David Nicholl: I chatted with Ms. MacLeod on the need to draw a line to accountability: Who is accountable for change; who is accountable to ensure that things are done properly? I think the biggest change that has come in is the fact that the Premier's chief of staff has actually taken accountability for the whole of the political side, and then each minister's chief of staff is responsible within their own office.

I think that driving accountability typically changes—absolutely, no matter what subject we're talking about, if you give people accountability, they suddenly realize, "I'm now accountable for this. I'll make it happen." There has been a lot of good work done on taking a look at the records schedules. For instance, the Premier's records schedule that Mr. Livingston was living under, and that should have been his bible, was actually written in 1999. It's quite old, and probably refers back to—even though there's everything in here about going ahead and getting your hard drives wiped and looking after email accounts, it probably needs a refresh, to be honest. I think there is a lot of work going into ensuring that we get a good, refreshed set of records schedules that are perhaps a little bit more current to today's age as opposed to a bit more of a paper age back in 1999. But honestly, the biggest difference to me, the most powerful difference, is to drive accountability, and that's what has happened.

Mr. Steven Del Duca: A few weeks ago, both the Premier and the Minister of Government Services announced that they would be introducing legislation that, if passed, would strengthen political accountability, enhance oversight and increase transparency across government and within the broader public sector. The proposed legislation would build on the province's Open Government initiative and continue to demonstrate that the new government is looking forward when it comes to accountability for the people of Ontario. I understand that this legislation has been in the works for some time, and so I just want to finish off, I guess, in the time we have

left, by asking you a bit more about the initiatives that the government has undertaken to open up government completely and become one of the most open and transparent governments in Canada.

This legislation also includes proposed amendments to FIPPA that would prohibit the wilful destruction of documents and implement a maximum fine of \$5,000. Speaking from your own experience—and I mean this in a sort of broad, higher-level way, keeping in mind that the legislation has not been formally introduced just yet—I'd like to get a sense from you regarding how you see the impact and what the impact would be of an unprecedented level of openness and transparency in government.

Mr. David Nicholl: My area of interest and expertise is, frankly, more around the area of open data and open information. That's really what my background would serve. There's no question whatsoever that there will be a dramatic culture shift across many governments as a default happens for data. Today, there's still a sense that data belongs to an organization.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. David Nicholl: Going forward, what we're looking at is a really exciting change where the data actually belongs to the people of Ontario. I don't think Ontario has been particularly swift to get there, to be very honest. Some other governments are way ahead. The US has been doing this for a long, long time; the UK has been doing it for a long time. The feds have even done some of it. We started quite slowly. We released our first data sets back in October 2012. We did it really carefully, because we weren't sure what people wanted, to be honest. What we had seen in previous exercises was just this ginormous mass of data going out there that, frankly, no one knew what to do with. What we wanted to do was try to take a different approach and come at it a lot more scientifically and say, "What kind of data would you like? What would you use? If you're a not-for-profit, what data would you like to use to actually?"

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca.

To the PC side: Mr. Yakabuski, 10 minutes

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Mr. John Yakabuski: Thank you very much, Mr. Nicholl, for joining us today.

Now, in the questions from Mr. Del Duca, there seemed to be an implication that it's a pretty routine thing to remove records, or wipe out records, when someone leaves. You implied that it was as well. But there are some pretty serious restrictions on what records might be wiped out. Correct?

Mr. David Nicholl: Absolutely, yes.

Mr. John Yakabuski: Now, the Archives and Recordkeeping Act was passed by the current government, the McGuinty government—the McGuinty-Wynne government—in 2006. So that changed, and I think it updated, the reality of the electronic age we're living in today. I mean, having someone remove their files and wiping out the entire contents of 24 hard drives—we're talking about two different acts here, are we not?

Mr. David Nicholl: There is absolutely—people have to understand that there is a requirement to keep data when it's relevant. Absolutely.

Mr. John Yakabuski: Right. So the wiping out of 24 hard drives, I mean, that is every bit of—I'm not an IT guy, but as I understand it, if you take a hard drive and you wipe it clean, whatever was there is gone. There's nothing left.

Mr. David Nicholl: Correct. But if you've done what you should have done, which is you've gone through that hard drive—

Mr. John Yakabuski: Oh, yeah. Okay. These hard drives, according to Detective Constable Duval, have been wiped clean.

Mr. David Nicholl: Which is maybe okay.

Mr. John Yakabuski: No, I'm not asking you that. I'm asking—they've been wiped clean. Okay? So that is quite unusual, to be taking hard drives—as you say, maybe it's okay. We're going to try to find that out. But 24 hard drives in the Premier's office have been essentially eliminated. They're gone. You compared it to the destruction of hard drives from a previous administration, that they'd been physically destroyed. But you have no idea what was on or not on those hard drives.

Mr. David Nicholl: No.

Mr. John Yakabuski: So let's be clear: Those hard drives could have contained information that was pertinent at the time that has now, by statute, been determined to allow those hard drives to be destroyed.

Mr. David Nicholl: Absolutely.

Mr. John Yakabuski: Okay. I just wanted to clear that up.

Now, when David Livingston asked you for this unfettered access to these computers and what we understand, at least from the part of Linda Jackson, who is, and I want to read this right, the chief administrative officer of corporate planning and services, and also Steen Hume and Scott Thompson—this was a powerful new tool. You may disagree, but they certainly thought this was something special. When he asked for this special access, why didn't you just say no? He's not an IT guy.

Mr. David Nicholl: I did say no. In fact, I said, "I have no authority to grant that." I said, "You've got to go talk to Cabinet Office."

Mr. John Yakabuski: That's not "no." That's saying, "I have no authority to grant that." But you continued to lobby for Mr. Livingston, according to the testimony of others, to see that he got that. In fact, you brought up what would—

Mr. David Nicholl: I have no authority to lobby, honestly. In fact, I didn't even—post phone call, the first time I spoke to them was—

Mr. John Yakabuski: Well, I suggest that you don't need authority to lobby.

Mr. David Nicholl: —the 30th of January.

Mr. John Yakabuski: You don't need authority to lobby, sir. Please. We do it all the time. Nobody has given me any authority either.

But you introduced what might be considered Canada's new group of seven: David Bailey, Eric Dilane and

Adrian Chan; then, later in this meeting on January 30, the names of Barry Strader, Martha Maloney, Henry Malhi and Bradley Hammond. You introduced them at that meeting, saying that they already had this special administrative key, if you want to call it that.

Mr. David Nicholl: Individual.

Mr. John Yakabuski: Individual, but according to Peter Wallace and Steen Hume, their interpretation of it was that they had this unfettered access, not an individual access, but unfettered access, the kind that David Livingston was looking at, or looking for.

Mr. David Nicholl: No, we would never have done that.

Mr. John Yakabuski: Well, those are the—I don't know why you wouldn't have read the ITO, because your name is all over it. These are the kind of insinuations that are being made by other members of the government; the secretary of cabinet; his secretary, Steen Hume; Mr. William Bromm, the legal counsel. There seems to be a differing view about what was being asked for and what that which was being asking for actually was, what kind of powers it granted to Mr. Livingston. He then put them in the name of Wendy Wai and transferred them by proxy to someone who wasn't even in the public service.

You say that you never knew of Peter Faist. You don't know him?

Mr. David Nicholl: Nope.

Mr. John Yakabuski: You don't know Laura Miller?

Mr. David Nicholl: No.

Mr. John Yakabuski: To your knowledge, you've never met her?

Mr. David Nicholl: No.

Mr. John Yakabuski: I could ask you if you only work nights, but I'm not going to do that, because it doesn't seem to me that you ever meet anybody—

Mr. David Nicholl: I meet tons of people, but I do not meet people in the Premier's office.

Mr. John Yakabuski: Okay. Well, you're meeting us today.

You're the chief of—what do we call it?

Mr. David Nicholl: CIO.

Mr. John Yakabuski: Yes, that's the guy, CIO, chief information officer. When did you find out that Peter Faist was the guy going into the Premier's office and wiping these hard drives clean? When did you find that out, and what was your reaction to that? This is your job. You're the guy who is kind of the caretaker of this information, right?

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order.

Mr. Bob Delaney: Chair, that is an allegation, and the member is asking it as if it were a fact. It is an allegation in the ITO, and it should be kept in that context.

Mr. John Yakabuski: It doesn't matter what it is. I'm asking him a question: When did he find out when Peter Faist went into that office?

The Chair (Mr. Shafiq Qaadri): Thank you. Your point is well taken. If you can just couch your language—"allegedly," etc.

Mr. David Nicholl: I'm fine answering.

Mr. John Yakabuski: Yes. Thank you.

Mr. David Nicholl: I think it was the Monday after I saw the story—I think he was let go on a Sunday, and it was in the paper on the Monday.

Mr. John Yakabuski: So you never found out, throughout this entire operation, that someone from outside of the Ontario public service was going in—

Interjection.

Mr. John Yakabuski: —and the OPP—

Mr. David Nicholl: Absolutely not.

Mr. John Yakabuski: Well, you must have known when the OPP questioned you.

Mr. David Nicholl: About Mr. Faist? It never came up, no.

Mr. John Yakabuski: So Faist's name never came up during the information to obtain?

Mr. David Nicholl: To me, no. During my interview?

Mr. John Yakabuski: Yes.

Mr. David Nicholl: No.

Mr. John Yakabuski: His name never, ever came up?

Mr. David Nicholl: No.

Mr. John Yakabuski: Okay. So—

Mr. David Nicholl: Sorry; to the best of my knowledge—it was a tough day. As well as I can recollect, his name never came up.

Mr. John Yakabuski: But he's a central character in this caper.

Mr. David Nicholl: This notion that somebody came from the outside did not come up, no. They very much focused on the granting of the admin rights, not what happened later on.

Mr. John Yakabuski: We'll just accept this for the time being.

You're the chief information officer?

Mr. David Nicholl: Yes.

Mr. John Yakabuski: We never heard anything from you until you actually got demoted from Acting Deputy Minister of Government Services. We never heard anything about your reaction. What was your reaction when you found this out? Were you not absolutely incensed that you, as the chief information officer, would have someone going, basically, behind your back, wiping out information—not even a member of the public service? Do you not feel like you were somewhat betrayed by your own people?

Mr. David Nicholl: It's not "my people"; I'm part of the OPS. But do I think it's appropriate? No, I do not.

Mr. John Yakabuski: No. Do you believe that allowing that to happen, a crime—in your view, do you think that should be considered unlawful?

Mr. David Nicholl: I have no comment on the crime or the unlawful part of it. I think it is absolutely incorrect, and I think to have people wandering around is not a good thing at all. I can't comment on whether—I don't know if it's a crime or not.

The Chair (Mr. Shafiq Qaadri): Parliamentary language, Mr. Yakabuski. Please resume.

Mr. John Yakabuski: There seems to be an unbelievable amount of contradictory statements in the information-to-obtain, and you're central in those, whether—

Mr. David Nicholl: Can I just quickly run through it?

Mr. John Yakabuski: Well, you haven't read it, so I'm going to tell you what's in it.

Mr. David Nicholl: I've got a few bits, and I can really speed it up.

Mr. John Yakabuski: Give me a second; you said you haven't read it, so—

Mr. David Nicholl: I've got little pieces, so I could really help you with it.

Mr. John Yakabuski: Oh, you've got little pieces?

Mr. David Nicholl: Yes.

Mr. John Yakabuski: Like a sharded hard drive sort of thing, not a completely wiped-out—

Mr. David Nicholl: It's pieces that people have kind of pointed out to me. I can go through them really quickly.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. John Yakabuski: Okay. I've only got a minute, so I'm going to ask you—there seems to be an incredible amount of contradictory statements—

Mr. David Nicholl: I don't think there are as many as you think.

Mr. John Yakabuski: Hey, I've got a minute; hold on. I really need to know why people as high up as the top civil servant in the government, Secretary Peter Wallace, in several instances here, seem to contradict what you're saying in your statements to Detective Constable Duval.

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Mr. David Nicholl: So, honestly, my opinion on this, really quickly—I don't know if my opinion matters, but it's what I truly believe. I will go through the ITO, but I really do believe that when you tie all the points together and you look at the questions that were asked and you look at the context, I personally believe there's a lot less disagreement than people think there is. I know, with my technical staff—

Mr. John Yakabuski: Okay. Did you ever believe that David Livingston was actually going to be—you knew that Wendy Wai—

M. le Président (M. Shafiq Qaadri): Merci, Monsieur Yakabuski. Je passe la parole maintenant à M. Tabuns. Dix minutes.

Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. Nicholl, going back to that meeting of January 30, were you invited to present to the other four who were present that day?

Mr. David Nicholl: No.

Mr. Peter Tabuns: Okay. Can you tell me what the agenda of the meeting was and what the main discussions were?

Mr. David Nicholl: It was to talk about admin rights—

Mr. Peter Tabuns: Okay.

Mr. David Nicholl: —during those five days. You have to be careful—and I don't have good notes between

the 25th and the 30th, so I'm going to have to go a little bit on memory, and my memory sucks, to be quite honest. I know that, which is why I take notes.

Mr. Peter Tabuns: Okay.

Mr. David Nicholl: But we certainly talked about the fact that—and I think a really important point is the fact that we had already granted—be they individual versus group, but we had already granted admin rights to the Premier's office—may well have had an impact on our ability to continue to say no. I know that that was something in my head because, as an IT guy, I don't like admin rights. They allow people to upset our ordered world, quite frankly, and they just increase our support costs because we don't know what we're going to come across.

I should say—and it's a really important thing for everybody to hear—admin rights are not uncommon in the OPS at all. We have at present, for non-ITS support staff, over 11,000 admin right holders out there—

Mr. Peter Tabuns: I appreciate that piece of information—

Mr. David Nicholl: —and we have over 2,700 group admin right holders—

Mr. Peter Tabuns: Mr. Nicholl, I'm going to take you back to the meeting because that's of greater interest to me.

Mr. David Nicholl: Sorry.

Mr. Peter Tabuns: So Mr. Wallace expressed concern about this request?

Mr. David Nicholl: I think everyone had concern.

Mr. Peter Tabuns: And what was Mr. Wallace's concern?

Mr. David Nicholl: I think everyone felt that—and as I think as he said at this committee before, there was a difficult time going on. There was a lot of public engagement with what was happening. I can't put words in his mouth, but it must have been a very difficult time for him to go through this. I shouldn't try and paraphrase what he's thinking, but there definitely was—it was kind of, "What do we do with this?"

But the big issue, though, was, there is a records schedule that exists—from 1999, unfortunately—that made it very clear, though, that they do have an accountability to actually do this. Premier's office staff should be actually wiping their hard drives. However, they've got to do it when they follow the full script of the records schedule.

Mr. Peter Tabuns: And that was the content of your discussion in that meeting?

Mr. David Nicholl: Yes, and I was sent off to find who the seven people were who had the admin rights already.

Mr. Peter Tabuns: Okay. But you're saying that at the time you left the meeting, no final decision had been reached?

Mr. David Nicholl: Absolutely not.

Mr. Peter Tabuns: And so it was later that a decision was reached. You're saying—

Mr. David Nicholl: The next day, I got the call.

Mr. Peter Tabuns: And you were informed. Okay.

I'm going to turn it over to my colleague Mr. Singh, who will follow up.

The Chair (Mr. Shafiq Qaadri): Mr. Singh.

Mr. Jagmeet Singh: Thank you very much. I'm going to take you through some quick questions. Can you just quickly rhyme off the names of the people who were in that meeting on the 30th? Peter Wallace was there. Who else was there, in your recollection?

Mr. David Nicholl: Steen Hume, William Bromm, Scott—and I'm not sure if Linda—Scott Thompson. I think Linda Jackson might have been there. I think she was there.

Mr. Jagmeet Singh: Who else would have known that there was an OPP investigation going on in your office?

Mr. David Nicholl: Oh, quite a lot.

Mr. Jagmeet Singh: A lot of people would have known?

Mr. David Nicholl: Not a lot, but we were quite actively involved with them.

Mr. Jagmeet Singh: Right.

Mr. David Nicholl: We were doing a lot of work around the cybersecurity area.

Mr. Jagmeet Singh: Okay. Normally, would you report to a superior? In terms of on a daily basis, is there someone that you report to?

Mr. David Nicholl: No.

Mr. Jagmeet Singh: There is no one that you report to?

Mr. David Nicholl: I mean, I would work for my deputy, but it wouldn't be on a daily basis.

Mr. Jagmeet Singh: On a weekly basis, do you report to—

Mr. David Nicholl: Yes, absolutely.

Mr. Jagmeet Singh: Okay. You would report on a weekly basis about things that would happen, updates on things that were significant. Would this have been a significant thing that you would have reported to your—

Mr. David Nicholl: We would have talked about it, for sure, yes.

Mr. Jagmeet Singh: Okay, so you would have talked to your—

Mr. David Nicholl: To Kevin.

Mr. Jagmeet Singh: —to Kevin about the OPP investigation.

Mr. David Nicholl: And don't forget, this has been going on through the whole IPC—I mean, this was a big topic for us—

Mr. Jagmeet Singh: Sure. Of course it was. And other folks would have known—for example, the receptionist and the other staff members probably would have known that there was an OPP investigation?

The Chair (Mr. Shafiq Qaadri): Mr. Singh, the committee is finding it not really within the mandate to explore who knew about what in the office. I'd just invite you to return to the mandate.

Mr. Jagmeet Singh: The cybersecurity branch: Who oversees that? Which ministry is responsible for that?

Mr. David Nicholl: Government services.

Mr. Jagmeet Singh: Government services. So when you were a part of government services, you would have direct dealings with cybersecurity?

Mr. David Nicholl: Yes, I would.

Mr. Jagmeet Singh: Were you aware of the report that they released regarding this issue of email deletion?

Mr. David Nicholl: Email deletion?

Mr. Jagmeet Singh: Sorry. The cybersecurity branch released a report surrounding information that arose from this committee, looking into the deletion of hard drives and the wiping clean of data.

Mr. David Nicholl: Okay. So, really important—our forensics group within cybersecurity quite often will be Chinese-walled from the rest of the organization, and when they—

Mr. Jagmeet Singh: Okay, so you didn't read their report, then?

Mr. David Nicholl: No, absolutely not. When they get into this—

Mr. Jagmeet Singh: Are you aware of the report?

Mr. David Nicholl: I'm aware it's there.

Mr. Jagmeet Singh: Would you be able to table that report or provide that report?

Mr. David Nicholl: No. I don't have a copy of it, so I can't.

Mr. Jagmeet Singh: Sure. It was something known throughout the government, that there was an OPP investigation going on surrounding emails. That was something quite well known, in your opinion?

Mr. David Nicholl: You know, sometimes you think everyone would know, and maybe they don't. Yes, sure. I just don't know.

Mr. Jagmeet Singh: Okay. Was there a widespread problem in regard to this policy of data retention and the proper way to retain data? Do you consider this as a widespread problem, that people weren't aware of the proper procedures of how to store data before wiping clean hard drives, that this was something that was an ongoing, kind of a broad problem?

Mr. David Nicholl: I'll split them a little bit. I think records management is an ongoing labour of love that we have to keep doing, because people quite often just don't think of it. Especially in this day and age, with email, where it's just unstructured and it's coming at you—you all get it, hundreds a day—it can be difficult. So a huge part of what we have to do is educate, educate. We've got to keep doing it, and we've been doing it; we really have.

Mr. Jagmeet Singh: But do you think it's a problem that the folks are deleting emails, or deleting their data from their computers, when they should be recording them or maintaining a record of them? Is that something that you notice as an ongoing problem?

Mr. David Nicholl: I wouldn't call it a problem. I think it's something that we have to keep right in front of people's eyes, to say, "You've got to be thinking about this every day, because emails are piling up in your email box."

It's an unstructured piece of data, and we can do nothing with it. Do we have to do something as far as structuring the way email comes in? Absolutely, we do.

Mr. Jagmeet Singh: Have you noticed a change in terms of how records are now being maintained?

Mr. David Nicholl: I notice a difference in the discussion around it, absolutely. That's what we're talking about over here. I think there is a very definite focus on accountability and who's accountable for it. That will drive change.

Mr. Jagmeet Singh: Sure. And what do you think prompted that? Was it because folks in superior positions recognized—

Mr. David Nicholl: The IPC report prompted it.

Mr. Jagmeet Singh: The IPC report?

Mr. David Nicholl: Absolutely.

Mr. Jagmeet Singh: And do you think that your superiors—when you said “quite a lot of people,” would that include ministers and deputy ministers, in terms of quite a lot of people knew about this investigation?

Mr. David Nicholl: Honestly, I have no idea how many people knew about it. I really don't.

The Chair (Mr. Shafiq Qaadri): Mr. Singh, thanks again for returning to the inquiry of who knew what. Again, return to the mandate, please.

Mr. Jagmeet Singh: In terms of the policies now that there has been a change—what prompted it? Was it folks—senior ministers or deputy ministers—who recognized that there was a problem in record-keeping that prompted this change?

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. David Nicholl: No, honestly, I think the commissioner's report really was a catalyst for change. I think we talked about it over here, that there has been a number of initiatives as part of the government's future accountability—I'm not sure I've got the right word or not. But anyway, there's a bill coming—

Mr. Jagmeet Singh: Were there other folks who were investigated or who were interviewed, to your knowledge, within your staff or within your organization, related to the OPP investigation?

Mr. David Nicholl: Were there other interviews that took place?

Mr. Jagmeet Singh: Yes.

Mr. David Nicholl: I wouldn't necessarily have first-hand knowledge of that, honestly.

Mr. Jagmeet Singh: Sure. What's your second-hand knowledge?

Mr. David Nicholl: It really was kept quite confidential at the time and we didn't talk about it at all.

Mr. Jagmeet Singh: How many interviews did you have?

Mr. David Nicholl: With the OPP?

Mr. Jagmeet Singh: Yes.

Mr. David Nicholl: I had one formal interview with them.

Mr. Jagmeet Singh: One formal?

Mr. David Nicholl: Yes.

Mr. Jagmeet Singh: And were there any other informal interviews?

Mr. David Nicholl: Not interviews; meetings, absolutely. I met with them once a week as part of the overall coordination effort.

Mr. Jagmeet Singh: Right, right. But in terms of the investigation specifically, there was—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side: Mr. Del Duca, final 10 minutes.

Mr. Steven Del Duca: A couple of things I'd like to go over: In the last round of questioning from the official opposition, Mr. Yakabuski, I think, kind of implied that the Archives and Recordkeeping Act, because it was passed in 2006—the so-called retention rules wouldn't have applied to the 2003 government transition. This arises, I can only imagine, because in the first round of questioning from Mr. Tabuns you talked about what took place, to the best of your knowledge, from what you were able to find out with respect to records retention between the transition—

Mr. David Nicholl: From 2003.

Mr. Steven Del Duca: —from the outgoing Conservative government to the incoming Liberal government.

Mr. David Nicholl: Yes.

Mr. Steven Del Duca: Mr. Yakabuski, from what I could tell, referenced that again, because that particular act passed in 2006—the records retention rules didn't apply to that particular transition. I just want to make sure that we clearly understand.

The Premier's office record schedule, the one that I believe is also included in the ITO or appended to the ITO, is actually dated from 1999, so I can only assume that this particular record schedule and the requirements that are found therein would actually have applied not only to the 2013 transition, but of course to the 2003 transition, as you referenced in your response to Mr. Tabuns in his first round of questioning.

Mr. David Nicholl: Correct.

Mr. Steven Del Duca: It's important that it's clear that these same rules would have applied to that particular transition as well.

Because of that, I do want to go back over a little bit of the terrain, taking up something that you mentioned in one of your answers to Mr. Tabuns regarding that 2003 transition. Just for the record, so we clearly understand, that's a transition that took place when the outgoing Conservative government of Mr. Eves—that's a government in which Mr. Hudak served as a senior cabinet minister—was transitioning to an incoming Liberal government. If I understand it correctly, what you said here earlier today was that hard drives from Mr. Eves's Premier's office—and possibly, one can only presume, from other ministers' offices as well—were actually physically removed and stored, and that you don't know and perhaps, frankly, at this point, nobody knows, what might have occurred to those particular hard drives from that Conservative Premier's office before they were removed, when they

were removed, as they were being removed and before they were stored. I just wanted to make sure that we clearly understand that that's what you said.

Mr. John Yakabuski: Point of order.

The Acting-Chair (Mrs. Donna H. Cansfield): Yes?

Mr. John Yakabuski: The question is so preposterous. It calls for complete speculation on the part of Mr. Nicholl. He doesn't know anything about those hard drives other than the fact that they were destroyed by statute—

Mr. David Nicholl: Stored. They were stored.

Mr. John Yakabuski: —stored and destroyed by statute in 2011. Mr. Del Duca should stop wasting the committee's time with this silliness.

The Acting-Chair (Mrs. Donna H. Cansfield): Thank you very much, Mr. Yakabuski. The witness may answer as he pleases.

Mr. Steven Del Duca: If you can just clarify that that is, in fact, what you did tell us earlier today when you were responding to Mr. Tabuns. You don't know, we don't know if anyone knows at this point when those particular hard drives from that Conservative government were removed. We don't know what happened to them. We don't know what happened to them before they were removed. We don't know if, in fact, the Premier's—

Mr. David Nicholl: I have no knowledge at all. All I've got—

Mr. Steven Del Duca: We don't even know, at that point in time, whether or not Mr. Hudak and his former colleagues, current colleagues, followed the 1999 Premier's office records schedule—

Mr. David Nicholl: I have no knowledge at all, none whatsoever.

Mr. John Yakabuski: Point of order.

The Acting-Chair (Mrs. Donna H. Cansfield): Yes, Mr. Yakabuski.

Mr. John Yakabuski: There is no OPP investigation concerning an alleged scandal in the previous government, destroying information. The scandal is about this government, the McGuinty-Wynne government, destroying information, and people employed by them—

Mr. Steven Del Duca: Chair, my point of order back to that member would be: That's not a point of order. It's not remotely close to a point of order. He's dealing with allegations—

Mr. John Yakabuski: —in fact, people who were not even employed by them, people who were not even members of the public service coming in and destroying information. If Mr. Del Duca wants to waste the committee's time—

The Acting-Chair (Mrs. Donna H. Cansfield): Okay. Thank you, gentlemen. I think I'll make a ruling. It's really out of scope. If you could please move on.

Mr. Steven Del Duca: Do you have anything else you'd like to add with respect to some of the—

Mr. John Yakabuski: You might as well shut up now, Steve.

The Acting-Chair (Mrs. Donna H. Cansfield): Now, Mr. Yakabuski, please.

Mr. John Yakabuski: It's just that it's getting sillier by the—

The Acting-Chair (Mrs. Donna H. Cansfield): Excuse me, sir, I'd like you to—

Mr. Steven Del Duca: Actually, Chair, I can understand why Mr. Yakabuski is embarrassed. He opened the door to this line of questioning and now I'm walking through it. I understand that makes him feel uncomfortable—

Mr. John Yakabuski: Not at all. You're the one—

Mr. Steven Del Duca: Unfortunately, Chair, I understand that makes him uncomfortable.

Interjections.

The Acting-Chair (Mrs. Donna H. Cansfield): Gentlemen, thank you.

Mr. Steven Del Duca: I understand that when the Conservatives are confronted with the truth, it makes them very uncomfortable, Madam Chair.

Interjections.

The Acting-Chair (Mrs. Donna H. Cansfield): Gentlemen, that's enough. Thank you. Mr. Del Duca, if you'd continue?

Mr. Steven Del Duca: Sure. As I was saying, anything else you'd like to add regarding the government of Ontario's initiatives with respect to opening up government as it relates to data?

Mr. David Nicholl: Yes. I'll talk for hours on open data.

Mr. Steven Del Duca: Please.

Mr. David Nicholl: I think it's one of the most interesting and innovative things that a government can do. I think it's great inside government, because we get to share—at the moment, it's kind of tough to get data shared across ministries, even. It's going to allow ministries to share data across lines, but what's really interesting is when we get smart people outside who take some of this data and start doing interesting things with it.

There have been some great examples. When we first launched in October—October 12—within a week we had a really cool app that had been developed by a third party that tied together some water quality data with some StatsCan data, as far as population, with some stuff from the climate side. So immediately you start enabling these people to actually use the data, and it's in a format they can use. It's not in a PDF format or an Excel spreadsheet. It's raw data they can take and actually use. I just think it's a very exciting future for us, and we don't know where it's going.

I think it's going to be interesting for all of you as well, because things will be out there. Knowledge will be known. There won't be, perhaps, as much control as there was in data, so we're just going to have this much more open world. It's going to be quite exciting, actually.

Mr. Steven Del Duca: Thanks very much for your answers today, and for being here.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca, and thanks to you, Mr. Nicholl, for your presence. You're officially dismissed.

We'll recess, I think, for a few minutes, and then we'll have a subcommittee meeting. Thank you.

The committee recessed from 1637 to 1648.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The committee is back in session. We have a motion presented by Ms. MacLeod.

Ms. Lisa MacLeod: I'm wondering if I can defer it. I'd like to rework some of the wording.

The Chair (Mr. Shafiq Qaadri): You are absolutely entitled to defer it. We'll put it on hold until then.

Ms. Lisa MacLeod: Thank you.

The Chair (Mr. Shafiq Qaadri): Any further business for the committee? Seeing none, the committee is now adjourned.

The committee adjourned at 1649.

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Jeudi 10 avril 2014

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 10 April 2014

Jeudi 10 avril 2014

The committee met at 1202 in committee room 2.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the Standing Committee on Justice Policy to order. We have some committee business, not witnesses, for today. I will turn it over to Mr. Tabuns.

Mr. Peter Tabuns: Chair, I have questions, through you to the Clerk, about the appearance of witnesses before the committee. Have Peter Faist and Laura Miller been contacted to appear before this committee? Can we be told how they were contacted and when they were contacted? How many times?

The Chair (Mr. Shafiq Qaadri): By the way, just to be clear, this is a sort of status update of witness invitations.

Mr. Peter Tabuns: Correct.

The Chair (Mr. Shafiq Qaadri): Go ahead.

The Clerk of the Committee (Ms. Tamara Pomanski): We'll start with Peter Faist, and if I miss something, then please ask me to clarify.

A letter was sent out on March 31 to an address that we were given of Mr. Faist's previous condo. That wasn't delivered because apparently he doesn't live there anymore.

I then received, the next day, correspondence from his lawyer, David Shiller, on April 2. We received a response from his lawyer on April 3, saying it was not enough notice for him to come to committee, as I think he is out of province.

I then sent an email on Monday, April 7, to David Shiller, letting the lawyer know, and for him to let his client know, that the committee is very flexible and willing to hear from him and that we do meet on Tuesdays and Thursdays. So I said, "Let me know when your client would be able to come to committee." That was sent Monday.

I hadn't heard back from Mr. Shiller, so I followed up with him yesterday via telephone. We spoke on the phone and he said that he will be getting a response back to me ASAP. So that's Mr. Faist.

Laura Miller: After Mr. Faist said no, in terms of he wouldn't be able to come for this Thursday's morning meeting, an invitation went out to Laura Miller on April 4—I think that was last Thursday. We received a hard-copy letter from her lawyer, Brian Shiller, and that was

actually exhibited in the committee on Tuesday. Basically, the email said that she has moved to BC. She is more than willing to be flexible to meet with the committee, but she is living in BC right now.

Then I sent the same email to her lawyer, Brian Shiller, mentioning that the committee sits on Tuesdays and Thursdays, and, again, "to let us know when your client is available." I received a response from her lawyer via email, the next day, saying that he will speak with his client, he appreciates the committee's flexibility and he'll get back to us ASAP.

Mr. Peter Tabuns: Might I ask, as well, David Livingston—could you tell us about your attempts to contact him and the response?

The Clerk of the Committee (Ms. Tamara Pomanski): I think David was next on your list. After we received the letter from Laura Miller's lawyer, an invitation went to David Livingston on April 7 for this morning's meeting, April 10. That went out via letter, how we always do, at 10:30 in the morning on April 7. We didn't receive a response, and we followed up with a voice mail on April 8 in the morning. We didn't hear back from him.

Mr. Peter Tabuns: And you still have not heard back from him?

The Clerk of the Committee (Ms. Tamara Pomanski): No.

Mr. Peter Tabuns: Of all of those you've talked to or corresponded with, have any offered alternative dates that might work for them?

The Clerk of the Committee (Ms. Tamara Pomanski): No. What I did was, as I mentioned, I went back to Laura Miller's lawyer and Peter Faist's lawyer and said, "Hey, we meet Tuesdays and Thursdays. Let us know. We're flexible." Alex Gair—an invitation went out on April 8 for, again, this morning's slot, and she responded the next day saying that she was unavailable. That was it.

Mr. Peter Tabuns: Okay. Did anyone ask for conditions around their appearance at committee?

The Clerk of the Committee (Ms. Tamara Pomanski): No. I think they were just—Peter Faist's lawyer was just wanting to know when the committee meets, and I said that we meet every week, and then just basically the logistics of it and maybe if travel costs would be covered etc. That was about it.

Mr. Peter Tabuns: And they're aware that they are a priority concern for people on this committee?

The Clerk of the Committee (Ms. Tamara Poman-ski): I'm sorry?

Mr. Peter Tabuns: They're aware that they a priority concern?

The Clerk of the Committee (Ms. Tamara Poman-ski): I would assume so. I responded back to them right away and said, "Please let us know. We'll work around you. We meet all the time."

The Chair (Mr. Shafiq Qaadri): I think that's asking us to comment on their mindset, so that's a little above and beyond even the Chair's capacity.

Mr. Peter Tabuns: And the Chair has many capacities.

The Chair (Mr. Shafiq Qaadri): It's a rolling skill set, yes.

Mr. Peter Tabuns: I can see that.

Will the Clerk release their emails and letters of response?

The Clerk of the Committee (Ms. Tamara Poman-ski): To the committee?

Mr. Peter Tabuns: Yes.

The Clerk of the Committee (Ms. Tamara Poman-ski): Sure, I can do that.

Mr. Peter Tabuns: Thank you. If we could have that for our next meeting.

The Clerk of the Committee (Ms. Tamara Poman-ski): Okay.

Mr. Peter Tabuns: Mr. Chair, having talked to my colleague—he will address this as well. Our experience with Ornge was a lot of hide-and-seek with witnesses. We're not interested in that. We would like to have people before us expeditiously. We'll be pursuing these people as witnesses and, if necessary, we'll be coming back to the committee with a request for a Speaker's warrant.

The Chair (Mr. Shafiq Qaadri): Which is entirely your right and opportunity. As you know, there's a protocol and proper channels to execute that.

Yes, Mr. Delaney?

Mr. Bob Delaney: I grasp what Peter has been asking. Frankly, the government shares some of the concerns. I think, however, we're going to approach the process deliberately and make sure that we touch all of the bases along the way. If we need to use a Speaker's warrant, we won't be afraid to use it, but we're going to make sure that the process to get there has been impeccable.

The Chair (Mr. Shafiq Qaadri): Just for the committee's awareness, the jurisdiction of the Standing Committee on Justice Policy of the government of Ontario extends to Ontario. So if people are out of that jurisdiction, I don't believe that any call from the Chair, the Speaker, our invitations, browbeating by our Clerk etc. works or can work.

Yes, Mr. Yakabuski?

Mr. John Yakabuski: Thank you, Chair. Precisely that: It sounds great, but a Speaker's warrant outside of the province of Ontario has no legal weight. Great to issue it; it might make somebody look good, but the reality is, it's not going to be effective if that person has

decided that they're not going to appear before this committee, notwithstanding their indication that they're prepared to appear before the committee.

I share Mr. Tabuns's concern that it could be a prolonged cat-and-mouse game. I don't know whether we can do something like this, but I'll throw it out there: They should be requested to appear before this committee and given the specific time and date, and choose. Give the meeting times of every one of our committees and ask, "Which is the first available date that you can be here?" because otherwise it's going to be, "Well, we're prepared to come to the committee. You've thrown out some options." No. They are priority witnesses. These are the central characters in this caper, and I think each one of them should be sent the time and date of our committee meetings consecutively to choose which one they are available to meet us at—

The Chair (Mr. Shafiq Qaadri): Time and date will be offered, if that's agreeable to the committee.

Mr. John Yakabuski: —because otherwise we're going to be bouncing back and forth over and over again, and we may never see them.

1210

The Chair (Mr. Shafiq Qaadri): Understood. Fair enough. Options? Any other—yes, Mr. Delaney and then Mr. Singh.

Mr. Bob Delaney: Why don't we ask the witnesses in question to give us a list of dates? Basically, if they refuse—

The Chair (Mr. Shafiq Qaadri): We've got a happy meeting of minds: our dates, their dates in concord.

Yes, Mr. Singh.

Mr. Jagmeet Singh: I want to put a couple of things on the record to make it clear where our position is: (1) With respect to the Speaker's warrant, there's certain protocol and certain procedures that must be followed first and exhausted first, and we will certainly ensure that those are exhausted before we move to the next step; (2) there is a certain power of moral persuasion if you are aware that in the province of Ontario, a Speaker's warrant is issued—

The Chair (Mr. Shafiq Qaadri): Moral suasion.

Mr. Jagmeet Singh: And persuasion.

The Chair (Mr. Shafiq Qaadri): Suasion.

Mr. Jagmeet Singh: Sure—it has the ability to leave an impression on someone that they should appear before the committee, that the entire represented officials of the province, the majority of them have voted for it and have voiced their concerns. That has a very strong impact, and we want that to be known.

Finally, an outstanding warrant being issued would also have the effect that if anyone was to enter into the province of Ontario, they would then be under the jurisdiction of that warrant. So people visiting Toronto or coming into the province would be captured by that warrant.

For those reasons, it is quite compelling, it is quite important, and we will certainly proceed to that next step.

The last point is that in the case of Dr. Mazza in Ornge, he was responsive, but was avoiding actually

appearing before committee. He responded through his lawyer, saying that he was ill. Eventually, having received a number of responses but not actually a commitment to attend before committee, we took the next step. That is something that I'd also like to draw attention to, that simply responding without any sort of affirmative action to appear before the committee is not sufficient. We would like that to be noted as well.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. Your request for the committee to inflict moral suasion will be executed.

Just for the committee's benefit, these are the requirements, or I guess the parameters, of a Speaker's warrant. I would just read them for you.

"Invite a witness to appear

"(1) Should a witness refuse the invitation outright, every effort should be made to reasonably accommodate scheduling in additional invitations sent out. Then the committee should pass a motion by majority that the witness must appear;

"(2) This is formally indicated to the witness and the committee awaits a formal response. Again, every effort should be made to reasonably accommodate scheduling and all subsequent steps should be agreed to by a majority of the committee;

"(3) If after several requests (at least two) to formally have the witness appear, the committee is frustrated in their efforts, then the committee may decide by majority vote to report the situation to the House in a committee report;

"(4) The committee report summarizes the numerous steps the committee has undertaken to have the witness appear and requests that a Speaker's warrant be issued for the appearance of the witness on a specific date and time and location."

Then, of course, it takes on a life of its own, essentially out of our jurisdiction.

Ms. Thompson.

Ms. Lisa M. Thompson: Is it possible to get a copy of what you just read out?

The Chair (Mr. Shafiq Qaadri): It is eminently possible. Mr. Tabuns.

Mr. Peter Tabuns: Could we have clarity as to who actually serves and enforces such a warrant?

The Clerk of the Committee (Ms. Tamara Poman-ski): It would be the Sergeant-at-Arms, not the police. I think that was quoted somewhere, but it's the Sergeant-at-Arms.

Mr. Peter Tabuns: It's the Sergeant-at-Arms. All right.

May I just go on to say that, in raising this, we are trying to send a very clear message to these witnesses. We are not going to go through what we went through with Ornge. As Mr. Singh has said, we're not going to have people playing around for an extended period. We want them here, we want them testifying and we want them soon.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Yakabuski.

Mr. John Yakabuski: On the matter of the ability to persuade a witness to appear before this committee, I would ask that the committee request that a letter from Premier Wynne be sent to Premier Christy Clark in British Columbia, indicating the importance of Laura Miller's testimony before this committee and that Premier Clark would use her powers of moral suasion to encourage Ms. Miller to abide by the request of the committee for her to appear.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. Speaking on behalf of our team here, I think we'll have to digest that particular request and its various nuances before we agree.

Mr. John Yakabuski: Fair enough. It's on the record.

The Chair (Mr. Shafiq Qaadri): Any further comments before we adjourn? The committee is now adjourned until next week. Thank you, colleagues.

The committee adjourned at 1215.

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of Debates
(Hansard)**

Tuesday 15 April 2014



**Journal
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 15 April 2014

Mardi 15 avril 2014

The committee met at 1500 in room 151.

MEMBERS' PRIVILEGES

MR. PETER WALLACE

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, Mr. Peter Wallace, secretary of cabinet and clerk of the executive council of the government of Ontario, who will be affirmed by our Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Peter Wallace: I affirm.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Wallace. Your five minutes of introductory remarks begin now.

Mr. Peter Wallace: Thank you very much. I'm Peter Wallace, secretary of cabinet and head of the Ontario public service.

Let me start off by providing my condolences on behalf of the Ontario public service to the friends, family and colleagues of Jim Flaherty. Personally, I had the privilege of working with Mr. Flaherty when I was an assistant deputy minister at Ontario Cabinet Office during the late 1990s, and again extensively during the 2008 and 2009 period when I was the Deputy Minister of Finance, when Ontario and federal finance combined, under the leadership of ministers, to make significant progress: in terms of unlocking asset-backed commercial paper; in terms of securing the competitive future of Chrysler and General Motors; reducing tax burdens and compliance through harmonized sales tax and reductions in corporate income tax; and we made significant progress towards a national securities regulator.

I very much personally regret the loss of such enormous leadership and capacity to our province and country. On behalf of the Ontario public service, I express my very sincere condolences.

I know that the committee is familiar with me so I will not read a lengthy opening statement. I understand that members will have had an opportunity to review, in preparation for this, my earlier testimony. They will have seen in that the fundamental distinction between the ad-

visory and administrative roles of the Ontario public service and the responsibility and accountability of elected officials and political staff, particularly in terms of the management of their political records. I can confirm that I am confident that the Ontario public service has acted and will continue to act in the best of faith in fulfilling its obligations.

With that, I am of course happy to take your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Wallace. Thanks, as well, for reminding us of the passing of the honourable Jim Flaherty, of course, husband of our colleague Christine Elliott. I think almost the entire Liberal caucus and I'm sure other caucuses will be attending the state funeral tomorrow, Wednesday, at 3 p.m., at which time we'll have an opportunity to more personally express those.

I will now invite Mr. Fedeli and welcome him back to the committee, although I think it's likely a transient, temporary engagement. But in any case, Mr. Fedeli, your 20 minutes begin now.

Mr. Victor Fedeli: Thank you very much, Chair.

Mr. Wallace, thank you very much for your opening thoughts and reminding us all of the role of the honourable Jim Flaherty. That was very thoughtful of you to express your thoughts on behalf of the public service. I appreciate that from you.

In your opening sentences, albeit brief, you talked about basically the difference between the role of the public service versus the role of the elected and political staff. Is there anything you want to define in the differences of those roles?

Mr. Peter Wallace: I went into this fairly extensively earlier, in my March 2013 presentation. It's well established in law, convention and precedent that public servants serve at the direction of the government of the day. We provide advice from time to time. We have core administrative and statutory responsibilities. But our fundamental role, and particularly my fundamental role as the secretary of cabinet, is administrative on behalf of the government and advisory on behalf of the government.

For the issues that are at hand here, there are two, I think, fundamental separate sets of issues. They relate to the management of documents. I am responsible and accountable for, and pleased to take responsibility and accountability for, management of the documents generated and created by the Ontario public service. The management and disclosure or treatment of the documents of

the elected officials and their political staff are fundamentally the accountability and responsibility of those elected officials and their political staff.

Similarly, in terms of policy implementation and policy development, we provide advice as public servants, but the direction we take—and the direction we take proudly and specifically, but it is direction we take—is in terms of the implementation of those policies.

Mr. Victor Fedeli: There has been a tremendous amount of media and testimony here. The OPP were here. The OPP have been a wide subject of newspaper articles. There has been a lot of talk about a couple of people specifically—David Livingston and others.

In reviewing the testimony of our last visit together, you had talked about David Livingston. Is there anything that you can expand on what we learned back then, the first time you were here, and today, now knowing the different things that have been said by David Livingston and the OPP?

Mr. Peter Wallace: I appreciate the question. I'm pleased to offer an answer to that. I do know substantially more than I knew at that point in time. In this context I'm going to rely primarily on the information disclosed, obtained or made available through the information to obtain sworn by the Ontario Provincial Police.

As indicated in the information to obtain, I was made aware by my executive assistant, Steen Hume, in late January of 2013, of what we both took to be a passing comment by David Livingston with respect to the management of the Premier's records and the potential to have somebody in from the outside to deal with their political records. I need to clarify that it's not their cabinet records. Cabinet Office and you have had an opportunity to review the record schedule attached to the information to obtain. Cabinet Office undertook all of those steps outlined within that record schedule with respect to the official cabinet records. This has to do with their political records, for which it is very clear they have sole accountability and responsibility.

I did understand, through Mr. Hume, on a second-hand basis, that Mr. Livingston had made a passing comment. As indicated by the ITO, I placed no weight on that whatsoever. It struck me, to the extent it struck me at all, as a stupid comment, as an indication of passing frustration, and not something that one would reasonably expect any experienced executive to actually contemplate with any seriousness, let alone execute or apparently execute.

Mr. Victor Fedeli: Mr. Wallace, what was the comment?

Mr. Peter Wallace: What I understood the comment to be was that they would bring in a third party to manipulate the hard drives associated with the political records of the former Premier's office.

I subsequently learned from the OPP, in a second interview with me, that they did, in fact, find good reason to believe—this is confirmed in the information to obtain—that such an activity may have in fact taken place. They offered a clear allegation to that effect.

My reaction to that in the ITO is genuine. It is well documented, and frankly, I stand by the language and sentiment. I was extremely surprised to learn that there's an allegation that the actions had crossed from a stupid idea to something really stupid to what the OPP were telling me was potentially criminally stupid in that context.

To be very, very clear—I think this is abundantly obvious—had I had any reason to take those earlier comments seriously, I would have taken very different steps.

1510

Mr. Victor Fedeli: What was the date, approximately, of those comments, just to put it in context?

Mr. Peter Wallace: I don't know the actual date, but in a practical sense, it was during that last week of January. So it overlapped with the events of—and I'm sure you will ask me about the meetings we held and things like that, but it overlapped with that time period.

This was a fairly frenzied time, when we were engaged in a tremendous number of activities, both with response to the outgoing Premier and preparing for the incoming Premier. So I apologize for not understanding the exact date, but, as you'll know, I've treated this as a passing comment.

If you don't mind my explaining and putting on the record what I think is already abundantly obvious, but had I known, or had I had any reason to take this seriously, I would have behaved differently in that context. It's clear from the ITO, it's clear from my earlier testimony, it's clear from the evidence and from the memos, that with reference to—even though I have no formal accountability and responsibility for the records of the Premier's office, the political records, I was concerned with any suggestion that these would be dealt with in an inappropriate way. I spoke forcefully to Mr. Livingston about them. I ensured that he was informed both verbally and in writing through a very detailed, very bureaucratic, very clear memorandum of his responsibilities about which he already knew but was crystal clear on those.

Had I thought that he might be using an outsider, I certainly would have added in an extra gratuitous comment—"Don't use an outsider to do these things"—into the memo as well, just to be crystal clear on that. Obviously, had I known this, I would have disclosed this to the committee in the earlier meeting, had I put any material reliance on this.

Mr. Victor Fedeli: So beyond the ITO that we're speaking about, the OPP's ITO, is there anything that you can share about how the decision was made and who may have directed Mr. Livingston, then?

Mr. Peter Wallace: No. I do not have any insights into the motivations of Mr. Livingston beyond his language that he told me, that I've already talked about in earlier testimony. But I have no insight into his motivations or what he might have been thinking or any instructions he might have received.

Mr. Victor Fedeli: I saw your comments and the language you used, and the idea—I think you said that it went from a stupid idea to a really stupid idea to now an

OPP comment. Was it something that was simply stupid, premeditated, or do you think there was actually a little bit more thought put into it than that, in hindsight now?

Mr. Peter Wallace: I really can't put myself in the mind of Mr. Livingston in that context. You will appreciate, I think, that those are questions that are more properly put to others.

Mr. Victor Fedeli: Do you know of anybody else—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, I'll allow you to continue. It's just that the question that you just asked was a little bit on the hypothetical side, especially with the entering into a mindset of another.

Mr. Victor Fedeli: Oh, I apologize.

The Chair (Mr. Shafiq Qaadri): But, anyway, go ahead.

Mr. Victor Fedeli: Okay.

Mr. Peter Wallace: I can't answer in any event.

Mr. Victor Fedeli: Well, I was going to ask you who else may have been involved in that thinking. Do you know of anybody else who was involved in that thinking? I'm not sure if that's a hypothetical—

Mr. Peter Wallace: That is a question I can answer, and I do not know of anybody else who was involved in it.

Mr. Victor Fedeli: Okay. Last time we were together, you started talking about the fact that you were approached by members of the transition teams from the likely winners. I cut you off, and we got a little side-tracked on another topic. You were about to tell us who the people were who engaged you. Can you carry on that conversation?

Mr. Peter Wallace: Absolutely. I'm only going to talk, of course, to the team—

Mr. Victor Fedeli: The successful one.

Mr. Peter Wallace: —that's being associated with that. But the primary person was Monique Smith, a former member of the Legislature, well known to me as well as a former member of the treasury board in that context. A series of others came in line as well, but it was Monique Smith who was the primary contact at that point in time.

Mr. Victor Fedeli: What kind of contact was there? What were the discussions that you would have had with Monique Smith?

Mr. Peter Wallace: We had many, many conversations over an extended period of time. The conversations related to basically preparing the incoming team to govern. So they would have dealt with, from the mechanics of swearing in, to the process of selecting a cabinet, to the major issues at play at that point in time, and they certainly would have dealt with things like fiscal context, steps towards preparation of a budget, and major commercial transactions in play. Of course, they would have dealt with the issues that were vital and in front of this House, including issues of the privilege of the Legislature and the issues associated with, more generally, the return of the Legislature and possible recall of committees.

Mr. Victor Fedeli: In our discussion, again, you said, "[O]ne of these stunning things is that the committee

itself had not, at that point, turned its attention, for whatever reason, to the production of documents by the Premier's office." I said, "Of all the Premier's office officials, who were involved in the gas plant scandal at the time." We ran out of time when you said, "Of those who were part of the Premier's office at the period of transition.

"I can also confirm to you—" And we were done. Do you want to carry on, then? You were surprised that we had not talked about the transition team and their production of documents from the Premier's office. So let's have that discussion, then.

Mr. Peter Wallace: Let me refer to what I was dealing with at the time and then we can continue with the issue raised, which I frankly understand to be a slightly separate issue, but I'm happy to discuss it. What I was referring to at the time is the way the committee requests were initially worded. They did not necessarily capture records from the Office of the Premier.

Mr. Victor Fedeli: You mean our requests wouldn't have captured—

Mr. Peter Wallace: Exactly, and I was surprised at that. I was surprised that that fairly elemental part had been missed. I was also surprised that the focus of the conversation was as much on the volume of Ontario public service documents that had been disclosed and not on the relative absence of documents from elected officials and their political staff. Both of those were surprising to me. I had expected you to question me on those. I was not questioned on those, so I was surprised that those had not come out.

If you want to rephrase the secondary question or go back to it—I'm not sure I caught the gist of it as it related to the transition team.

Mr. Victor Fedeli: You obviously were surprised that there were very few documents from the Premier's office turned over in our net, if you will. Can you tell us, in your opinion, what you know today, now, why that occurred?

Mr. Peter Wallace: I have no further insight from that point in time. From a reasonableness or a common-sense perspective, I would have understood that the call for production of documents produced a massive tsunami of documents from the Ontario public service and from the relevant agencies. There were few, if any, documents from the government of the day. In fairness, I am compelled to note that this issue and this question was a priority of the new Premier to correct. She did request, from me and through my officials, access to the passwords of the former Premier's office so that her officials could review back, get documents and disclose them.

Mr. Victor Fedeli: I missed the beginning of that. Could you just repeat that?

Mr. Peter Wallace: The material disclosed to this committee was disclosed once Kathleen Wynne became Premier. For the sake of completeness, she did request that her staff review and discover whatever records were available and did make those, if they were responsive, available to the committee. But prior to the transition, my

understanding is that few, if any, records were found to be responsive, associated with the Premier's office or by ministers or their staff.

Mr. Victor Fedeli: You were also talking, at one point, about—you had a lengthy discussion with Mr. Yakabuski about—deleted emails versus—I call them “parked”—disabled emails. Do you feel, knowing what you know today, that many of the disabled emails ended up becoming deleted or destroyed emails? Is that something that would have occurred?

1520

Mr. Peter Wallace: This is something that I may have to write the committee on because the fine details of disabled versus deleted are not something with which I am completely familiar. My understanding is that in December 2012, staff from my office, or staff from Cabinet Office, took the initiative because we were concerned about the request—I believe from Mr. Tabuns. There was a freedom-of-information request from Mr. Tabuns that we took very seriously, and we were worried that as individuals left the Premier's office, if their accounts were deleted, that FOI request would perhaps not be fulfilled. So we stopped the practice of deleting the email accounts and instead only disabled them, meaning that they would be available for future recovery. So in that context—and because I am not an expert on this thing, I may have to write with a different answer, but that is absolutely my understanding. That was a proactive action from Cabinet Office to prevent the possible loss of records.

I want to emphasize something here: Cabinet Office is on very, very dicey ground—

Mr. Victor Fedeli: I'm sorry?

Mr. Peter Wallace: Cabinet Office is on dicey ground in this context. These are the records of the Premier's office. We are attempting to preserve those records as they relate to Cabinet Office; it may have inadvertently included some other records, but it's designed to capture the records as they relate to Cabinet Office.

Should anybody have left the Premier's office—and we were certainly aware of people leaving at that point in time—their records would not be subject to deletion but would be preserved. The technical mechanism is that you disable the account rather than delete it. Disabling it means it just sits there.

Mr. Victor Fedeli: Except for the fact that we've learned now that the accounts of 24 computers, according to the OPP, were wiped. Are these the very accounts that you're speaking about?

Mr. Peter Wallace: I think there's a key distinction here. I hope you will have an opportunity in the future to question a genuine IT expert in this context. I want to be careful with my own comments here because they don't hit a particularly high understanding of what goes on here. But as I understand it, the email accounts themselves are stored on servers. The issue associated with the administrative access has to do with access not to those servers but to individual hard drives; effectively, as I understand it, the C drive. If you had a document that you did not store on a network drive but you stored on your

personal drive, that would be the C drive; that would be accessible through the password. As I understand it, that would not primarily affect the emails.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Victor Fedeli: You spoke earlier about passwords. Can you elaborate a little bit further on who got the passwords? Who were they given to in the Premier's office?

Mr. Peter Wallace: I know this primarily from the information to obtain. You will appreciate that this is not something I would normally deal with. I made a decision—and you may want to revisit or question me further on that decision—that once I understood that the Premier's office already had access to administrative passwords, I had no basis for denying access to administrative passwords. That continued in a business-as-usual approach, which was a standard I was aiming for. My understanding from the ITO is that operations folks then gave the administrative password to Wendy Wai—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. We'll pass the floor to Mr. Tabuns of the NDP.

Mr. Peter Tabuns: Mr. Wallace, thank you for returning to the committee.

I took a look at previous testimony prior to today, and I know that in the past we've asked you very narrowly about matters, and not necessarily given you an opportunity to speak broadly about how you assess the events that led up to and culminated in the alleged destruction of documents. You've been fairly forthcoming here with Mr. Fedeli. Perhaps you've given us the full perspective that you want to give, but if there are things here that would illuminate the broader terrain for this committee, we would appreciate hearing your perspective on the approach of the McGuinty government to record-keeping and the events from the summer of 2012 until a new government, a new Premier, came in.

Mr. Peter Wallace: I appreciate the question. I need to be careful that I don't ramble on.

Mr. Peter Tabuns: I appreciate you being careful.

Mr. Peter Wallace: It is very genuine; I don't want to eat up time.

This file has not been a labour of love for the Ontario public service. It has been an exceedingly difficult file in two contexts. The first has been simply the mechanics of it. I think it would have been the preference of the Ontario public service and of the agencies that the gas plant contracts not be cancelled, and if they were to be cancelled because of a legitimate political decision, that the mechanics of unwinding those contracts be left with the formal contract holders and be left to a legal process envisioned by those contracts; and if there were a further decision to relocate those gas plants, that that be made through a more formal transparent cabinet process and that the costing and other things associated with that be transparent in terms of the sunk costs and the broader costs. I think, more generally, these have been the subject of frustration and challenge in my world, in the public service world and, frankly speaking, more broadly in the agency world as well.

Public servants have understood, and it took us a couple of days, frankly, to understand the broad privileges of the Legislature. When the first orders from a minority Parliament came through, the orders of the Legislature, I received legal advice that these superseded the traditional protections normally afforded us of solicitor-client privilege, commercial confidentiality, cabinet advice, personal information—all of those things. It took us a little bit of time. I went off and asked a bunch of different lawyers and sought to get a different answer. We very quickly did understand that those powers were compelling.

We set about trying to pull together the best possible record of responsive material and present that to the committee. Our efforts were not perfect, and we've taken full responsibility for the imperfection of our efforts in that context. I do believe that that approach was not fully shared, that there was an enormous effort by the public service to disclose all of the responsive records. There were far fewer responsive records that were found in others. Others have provided their explanations for that; that's not an area in which I can speculate. I can only say that it has been very challenging for the Ontario public service to put together the volume of records, keep track of it, put disclosure in good faith, deal with the mishaps that inevitably occur in that process, and account for our activities to the Legislature.

I will emphasize that I feel we have done that comprehensively, and we have provided full and fair disclosure to legislative committees. I think, to be very frank, we learned those lessons through this committee, and we have continued to apply them through the other committees of the Legislature, providing full disclosure. This has been a very difficult and time-consuming process for us, and it has distracted us from other files we would have done, but we do it out of legal requirement and obviously respect for the Legislature.

I apologize for the length of my answer.

Mr. Peter Tabuns: Okay. I appreciate you giving us that broader context.

David Livingston was given special administrative access to computers in the Premier's office. At the time you were asked for this, did you understand the scale of activity that is alleged to have taken place?

Mr. Peter Wallace: I did not. I think, in fairness, it's not the kind of thing that a secretary of cabinet considers. We do think in a very practical way. These administrative right privileges are not something we think about all the time. I think of them to some extent as a privilege like a credit card or something like that. You're provided with a government credit card; you know the rules with the credit card. We don't expect you to share that credit card with a third party. We don't expect you to charge personal expenses. We don't expect you to do anything untoward with that credit card.

Having said that, and I don't want to appear in any way disingenuous in this context, I was acutely aware of the broad debate and public interest associated with political records. I took, to be very direct, extraordinary steps with respect to first trying to ascertain whether or

not we were setting new precedent. I was told we were not setting a new precedent; therefore, I allowed the additional access to be issued.

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Secondly, even believing that it was not an additional precedent, I took a great deal of caution to ensure that Mr. Livingston was made aware of his accountabilities, writing an extremely bureaucratic memo, informing him in the most graphic language I could—and that is referred to in the information to obtain—of the type of inferences that he would leave himself and his government open to, and then provided him with, you know, the memorandum in writing.

This is, to be frank, not something we do every day. You will not find other memos of this sort. It reflects the fact that we were very concerned at this point in time.

Mr. Peter Tabuns: I'm going to turn it over to my colleague Mr. Singh for a period because he's going to be taken out of committee shortly.

Mr. Peter Wallace: I'm at your disposal, of course.

Mr. Jagmeet Singh: Thank you. I just want to work my way through this. You mentioned one thing off the bat that I think merits some time. If you could just summarize very briefly, you indicated that you had certain concerns around the overall steps that were taken: the decision process, the transparency around the cancellation and the relocation, particularly with respect to the manner in which it came to be. I think you also applied some emphasis on the manner in which the legal contracts were disposed of or dealt with. Why did you feel that that was of particular concern to you?

Mr. Peter Wallace: I remain acutely concerned—and I'll be very direct here. I remain acutely concerned that the respective roles of public service and political actors be distinguished. The roles of the public service and its context are to provide administrative support and advisory support. These are not to be distinguished from the decision-making roles. But we are sentient beings. We do have policy views, we do have policy advice and we prefer to work for systems that are functioning well.

Obviously, in that context, I would have preferred events to work out differently, and I would have preferred—and I think this is only echoing, to be frank and clear, the testimony of officials from the Ministry of Energy or the Ontario Power Authority or others—that these be dealt with within the contractual processes established when we entered into a series of commercial transactions with private enterprises with respect to the production of energy from gas-fired plants.

Mr. Jagmeet Singh: I'm going to put it a little more directly: Do you think that the lines were blurred? Is that fair to say, that the lines that should have been kept discrete were not kept discrete and were blurred?

Mr. Peter Wallace: Absolutely I do not feel the lines were blurred. I feel that they were completely kept apart. I'm worried that others in retrospect may see them as blurred and I want to make it crystal clear that, in my view, they were not blurred.

Mr. Jagmeet Singh: Okay. In retrospect, do you feel that the decisions made were made in a way that would

compromise the interests of Ontarians—that compromised the interests of the people of Ontario?

Mr. Peter Wallace: I think there's been a great deal of testimony in front of this committee. I think the committee has had an opportunity to review the report of the Auditor General.

Mr. Jagmeet Singh: I want to just ask you some of the timeline. Mr. Livingston came to you with this request for special administrative access. You assessed that this wasn't something that was not already in existence? This type of administrative access did exist already?

Mr. Peter Wallace: That's correct.

Mr. Jagmeet Singh: Okay. And—

Mr. Peter Wallace: So the answer to the question, the way you phrase it: That is what I assessed. I learned from the information to obtain that that may not have been strictly accurate, but that is my understanding at that point in time; correct.

Mr. Jagmeet Singh: Okay. And your understanding was, given that understanding, that's why you agreed to provide the access; is that correct?

Mr. Peter Wallace: Yes, that I had no basis for denying what they already had.

Mr. Jagmeet Singh: Right.

Mr. Peter Wallace: I assumed, frankly, that Mr. Livingston was asking what he had already received and that he had come to us rather than checking with his own people first.

Mr. Jagmeet Singh: Okay. Did that strike you as not flowing completely logically, that if he already had something similar, why would he need to request it through you?

Mr. Peter Wallace: It did not strike me as particularly unusual. Mr. Livingston is a high-powered, very smart, not patient man. He would not necessarily check those things with his own folks. He might naturally just come to us or to us and Mr. Nicholl, ask the same question of us, without going through his own folks. His office may have been in some chaos at the time; he may have preferred to come to us. So frankly, I did not find it surprising that he would ask us the question, or that he would ask the question of several of us simultaneously, or more or less simultaneously.

Mr. Jagmeet Singh: In making your decision or in this relation, were there any points in time where you had contact with or you provided updates to or information to anyone in the current Premier's office?

Mr. Peter Wallace: No.

Mr. Jagmeet Singh: Okay. Did you provide updates to anyone not perhaps in the Premier's office, but perhaps to any minister's office or anyone affiliated with any of the ministers?

Mr. Peter Wallace: No, I did not.

Mr. Jagmeet Singh: With respect to the cyber security report, are you aware of the cyber security report?

Mr. Peter Wallace: I am aware of the cyber security report in that it's mentioned in the information to obtain, and I had earlier awareness of the fact that the cyber security branch had been asked by the OPP to undertake

certain activities with respect to the chain of evidence and potentially certain activities with respect to initial review of that evidence, but I have no direct knowledge of the report. My understanding is that that was done on behalf of the Ontario Provincial Police and is not something I would expect to have any visibility into.

Mr. Jagmeet Singh: The Premier indicated—

The Chair (Mr. Shafiq Qadri): Mr. Singh, just for a moment, just on behalf—first of all, with regard to your questioning, the cyber security report questioning, I'd just invite you to bring your questions to the mandate of the committee as it exists.

Please continue.

Mr. Jagmeet Singh: The Premier indicated that she recognizes—claimed that she needed to implement a number of fixes, that there were certain problems going on, particularly with respect to record-keeping. She didn't explain how she knew about these concerns. Do you know what she was attempting to fix or why she had a perception that there were some problems that needed to be addressed?

Mr. Peter Wallace: I can't speculate what was in the mind of the Premier, but I do know what was very broadly known at that time—

Mr. Jagmeet Singh: What was broadly known at that point?

Mr. Peter Wallace: What we knew at that time was that there were very serious issues raised in this Legislature prior to prorogation, and in the public after prorogation, around the quality of document production from the Ontario public service but primarily from elected representatives and their officials, and that we did inform Premier Wynne of those issues and she would have known that these were pressing issues—in my view, she would have known that these were pressing issues of public policy.

Mr. Jagmeet Singh: Were you consulted or did you provide any feedback with respect to problems that you saw with respect to record-keeping and record-keeping practices and convey that concern to the Premier's office?

Mr. Peter Wallace: Yes, I did. I need to distinguish this in a very, very critical way, and I'll appreciate your patience as I try and explain this.

Mr. Jagmeet Singh: And when did you do this?

Mr. Peter Wallace: Continuously through transition.

Mr. Jagmeet Singh: Beginning when?

Mr. Peter Wallace: As soon as Monique Smith called me, but this will be less interesting after I explain it.

Mr. Jagmeet Singh: Sure, but roughly when was that, though?

Mr. Peter Wallace: A few days before the leadership convention. So let's call it January 22 or something along those lines.

Mr. Jagmeet Singh: Sure. And you conveyed concerns around the record-keeping—

Mr. Peter Wallace: I indicated that for the successful Premier, there would be a series of challenges, and these challenges were already well known. They would relate

to the fiscal challenges, they would relate to budget preparation, they would relate to things associated with the teachers' action at the time, so they would relate to broad issues.

Mr. Jagmeet Singh: And in referencing the gas plant situation?

Mr. Peter Wallace: Exactly. With reference to the gas plants, we would distinguish and we would talk to them about the records of which the Ontario public service was particularly concerned, which is the requests made by legislative committees.

Mr. Jagmeet Singh: And when you say you were communicating with them—

Mr. Peter Wallace: Sorry, I just need to be clear on one thing. We did not express any advice with respect to the management of political records or the hard drives or the emails associated with the former Premier's office. I indicated this back in March. If they wanted information on those issues, I would not be an appropriate source for that information. That would be something that they would appropriately obtain through the direct mechanism of the former Premier's office.

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Mr. Jagmeet Singh: When you indicated that you were communicating with them, who do you mean by "them"?

Mr. Peter Wallace: With Monique Smith, but also with others. So we had—

Mr. Jagmeet Singh: Others including—

Mr. Peter Wallace:—broad conversations around the issues in front of the Legislature; about document production by the public service; about the absence of document production by others; about document production by the Ontario Power Authority and others.

The area that we did not cover, because we had no visibility into it whatsoever, was the management and the practice of the former Premier's office with respect to its records management, whether it be hard drives or other mechanisms, of its political records.

Mr. Jagmeet Singh: Sure. I'm just going to slightly change track a bit. When the ITO was unsealed, have staff or elected members asked you for briefings about your understanding of the events?

Mr. Peter Wallace: They have not.

Mr. Jagmeet Singh: They have not.

Do you believe the Premier has regular contact with Emily Marangoni, Brianna Ames, Leon Korbee and Rebecca MacKenzie?

Mr. Peter Wallace: These are, as I understand it, officials in the Premier's office.

Mr. Jagmeet Singh: Yes.

Mr. Peter Wallace: I have regular scheduled meetings with the Premier; interact with her on cabinet business on a regular basis.

Mr. Jagmeet Singh: Right.

Mr. Peter Wallace: I have no understanding or visibility into her relationship with members of the staff, and to be very frank, I don't even know if these individ-

uals are located in the Whitney Block or in the Legislative Assembly.

Mr. Jagmeet Singh: From February 7 until today, have you ever briefed any political staff about the deletion of emails, wiping of computers or the special administrative right provided to David Livingston?

Mr. Peter Wallace: I know absolutely that I have not provided any briefing to the Premier.

Mr. Jagmeet Singh: And any political staff?

Mr. Peter Wallace: I do not recall any briefing. I do not recall any briefing to any member of the political staff.

The reason I'm going to distinguish these is because I have a very good understanding of what I've said to the Premier. The meetings with political staff, you will appreciate, are constant and ongoing, and I could not in good conscience absolutely guarantee to a high degree of evidentiary certainty that I have never made a passing comment to a member of political staff. But there was never a formal briefing, and here's why: If they are concerned about those issues, they will not get that; that is not my business. I took steps. I would have had every reason to believe that when I established the most astonishingly obvious set of bureaucratic notes about what to do and what not to do with respect to elements, any member in the Premier's office would have actually followed that path. Frankly, I had assumed that Mr. Livingston would follow that very clear direction laid out.

Mr. Jagmeet Singh: I understand. In terms of your informal discussions, what would you have disclosed in your informal discussions as it relates to the deletion of emails or the wiping of hard drives or the actions of Mr. Livingston with respect to the special administrative password?

Mr. Peter Wallace: I can't say that, because I have no recollection of informal discussions. I'm merely saying that I cannot exclude the possibility that, in a number of months, such a conversation did not occur. I can say absolutely that no such conversation occurred with the Premier. Simply because of the volume of conversations, many of which take place at different times, I cannot provide you with—

Mr. Jagmeet Singh: Sure. Did you inform anyone of the OPP investigating you or their interview during their investigation with you?

Mr. Peter Wallace: No. The OPP investigation was not a secret. It was requested by members of this committee, I believe. I—

Mr. Jagmeet Singh: But after, when—

Mr. Peter Wallace: I don't recall specific conversations about that.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh.

We pass now to the government side: Mr. Del Duca.

Mr. Steven Del Duca: Thank you, Mr. Wallace, for being here with us again today.

Before I get into some of the questions that I do want to ask, I did want to go in the direction of clarifying

something we heard a little bit earlier in one of the answers or in a couple of the answers that you gave to the opposition.

You said earlier that Premier Kathleen Wynne's office requested passwords to the former Premier's office email accounts after she was sworn in as Premier. I just want to clarify, regarding that particular matter, that on May 7, 2013, this committee passed a document production motion seeking all gas plant documents from the Premier's office. On May 21, 2013, Tom Teahen, Premier Wynne's chief of staff, wrote to this committee in response to that particular request, and I want to quote from the letter from Mr. Teahen to the committee: "In addition, on May 9, we were advised by Cabinet Office IT that the email accounts of 52 individuals formerly employed in the Premier's office could be accessed. A search of those accounts was conducted by my office and any available records, applicable to the committee's motion, have been included. I have enclosed with this letter a list of the 52 individuals."

So I just want to clarify, when you said that Premier Kathleen Wynne's office had requested access, it was to complete the search of those accounts. Is that correct?

Mr. Peter Wallace: That is correct.

Mr. Steven Del Duca: I just want to note for the record that 30,000 documents from the Premier's office were provided to the committee at that particular time.

So with respect to the Kathleen Wynne government and their efforts to undertake or to deal with issues around transparency, I want to ask you about the steps that the new Premier, the current Premier, has taken to commit our government to openness and to transparency. I think you're aware that in the last year Premier Wynne's office has coordinated mandatory document retention training for all political staff at Queen's Park. Are you aware of that?

Mr. Peter Wallace: I am aware of that, yes.

Mr. Steven Del Duca: Thank you.

Premier Wynne has also taken many steps to be open and transparent on the gas plant issue in particular, including calling in the auditor to review the Oakville relocation, recalling the Legislature right away and offering the opposition a select committee. When the opposition rejected that particular offer, she significantly expanded the scope of this particular committee. Premier Wynne has testified at this committee twice, along with several other members of the current and the former government, and she's provided tens of thousands of documents in response to committee motions, including the 30,000 documents that I referenced a second ago. I understand that a number of materials that have been disclosed to this committee include documents from Cabinet Office, which I know you discussed a little bit in the previous two rounds of questioning.

Can you comment for us, or elaborate a little bit for the committee, on the concerns that exist when documents from the Cabinet Office are turned over to a committee? In a general sense.

Mr. Peter Wallace: The committee has legitimate and appropriate powers, but they are substantial. I do know

that members of the Ontario public service have from time to time struggled with the nature of document disclosure in terms of commercially confidential or other information, and have worked with this and, particularly, other committees to ensure that that information is treated in a respectful and appropriate way. It's been my experience that officials have had an opportunity to raise those issues and that they have been dealt with appropriately and respectfully by this committee and other committees of the Legislature. But these, because of the volume of information and because some of the things that we do do require an element of confidentiality, and confidentiality only in the public interest, but confidentiality—we have raised those issues and they have been dealt with appropriately, in my view, by the various committees of the Legislature.

Mr. Steven Del Duca: Thank you for that. So just to be clear, despite the risks that you discussed a second ago, can you confirm for the committee—I think you have, but I just want to make sure that we get this emphasized correctly—that your office has acted in good faith to turn over documents as per the committee's requests.

Mr. Peter Wallace: We have always acted in good faith to turn over all of the documents at the committee's request.

Mr. Steven Del Duca: Thank you.

With respect to Premier's Wynne's office, can you comment on what you have seen in terms of Premier Wynne's office's commitment to proper record retention and disclosure?

Mr. Peter Wallace: I need to be slightly cautious here because the question implies specificity of knowledge that I do not have. Just as I did not actually have direct visibility into the record management processes of the former Premier's office, I do not have direct visibility into the record management practices of the current Premier's office.

I have seen enormous change in the types of questions being asked of me. The concerns that I felt were raised by prior questions that caused me to take fairly exceptional steps, including writing memorandums and ensuring they were read out over the phone and those kinds of things—I have not seen any of those. In fact, the requests of my office have been oriented towards arranging training for political staff and securing access to the accounts so that records can be produced. So it has been a very different dialogue and approach. But I emphasize that that is an indirect answer, because from a direct answer, just as I had no certain knowledge about the approach of the former Premier's office with their documents, I obviously don't know what is happening. But it is my understanding, and certainly the types of questions in my interaction with the Premier's office is very, very different at this point with regard to these matters.

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Mr. Steven Del Duca: Can you elaborate on the different kinds of questions? You have mentioned that a couple of times. I'm just wondering if you can give us a little bit more regarding the differences.

Mr. Peter Wallace: I've testified and indicated my concerns associated earlier—both in earlier testimony and earlier this afternoon. The orientation of the questions now is around ensuring full and fair disclosure.

Mr. Steven Del Duca: I'm not sure if this is getting into that area of specificity or however you referenced it a second ago, but I'm wondering if you can discuss with us at all the current Premier's office's response to the issues that were raised specifically by the Information and Privacy Commissioner. For example, can you comment on the reaction of Premier Kathleen Wynne's office to that particular IPC report?

Mr. Peter Wallace: I'm struggling to remember this, and I apologize for this, but it's my recollection that the Premier's office undertook some efforts to accept the report, ensure training for their staff and so on.

Mr. Steven Del Duca: Okay. So beyond some of these specific or somewhat narrow areas, I'm wondering if you can provide us with your perspective about the other undertakings that Premier Wynne's government has set about to embrace with respect to opening up government, becoming one of the most transparent governments across the country of Canada, generally speaking—if you can talk to us a little bit about some of the other initiatives that Premier's Wynne's government has embraced, has moved towards.

Mr. Peter Wallace: I could burn up a lot of time here, but I won't, frankly.

The Open Government Initiative is vitally important from an Ontario public service perspective. We understand the limitations on public policy, and we understand the need to make information, including high-quality digital information, available to the public so they can participate more fully in public policy, both the design of public policy and ultimately, I am very hopeful, in the delivery of public policy. The Open Government Initiative lays the groundwork for that, and we're working in a very firm and established international context and trend.

Mr. Steven Del Duca: Just out of curiosity, how does Ontario compare, the initiatives that are being undertaken, to other provinces across Canada?

Mr. Peter Wallace: I think it puts us largely in the mainstream. I think the UK is probably a little bit ahead. The United States government has a number of highly specific initiatives. It's my understanding that in general, we're towards—

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca, just as you continue, I once again call your attention—this line of questioning with regard to open government in other provinces is not directly material to the mandate of this committee, and I would invite you to return to it. Thank you.

Continue.

Mr. Steven Del Duca: I appreciate that. It was a fascinating answer, but I do appreciate that.

I want to take just a minute or two to ask some questions. Earlier, in the previous two rounds of back and forth that you had with the opposition, there was some discussion around the transition period, and so I wanted

to talk a little bit about that transition period from the former Premier's government to the current Premier's government. I understand, or I gather, that things can tend to move fairly quickly when the torch is passed from one Premier or one administration to the next. Is that correct?

Mr. Peter Wallace: That's correct. It's a busy time.

Mr. Steven Del Duca: It's a busy time. So you became secretary to cabinet in the fall of 2011, so it would seem, then, that this is the first time that you've had the chance to oversee that kind of new government move in, that kind of transition. Is that correct?

Mr. Peter Wallace: That's correct.

Mr. Steven Del Duca: Could you talk to the committee a little bit about what that process specifically is like and what role Cabinet Office plays in that process?

Mr. Peter Wallace: Sure. Cabinet Office has a formal and an informal role. The formal role deals with things like maintaining custody of cabinet documents, maintaining the continuity of government decision-making, preparing for the formal swearing in of the new Premier, liaison with the Office of the Lieutenant Governor, and a whole bunch of other things broadly associated with the machinery of government, and that rests very much with the central agency of Cabinet Office.

We're also expected to provide decision-making continuity more broadly, which is to say that we provide access and information to the incoming Premier's office with respect to priorities, issues of the day, legislative challenges, fiscal issues, things like the ongoing issues at that point in time associated with the teachers' negotiations, and a handful of other aspects.

We also liaise extensively with the individual ministries who are preparing for their new ministers, preparing briefing information. We consolidate that information in a way to make material available to the incoming Premier and his or her transition team. That's with respect to preparing for an incoming Premier of any stripe, whether a transition within the same party or a transition between parties.

We also take an approach with respect to the outgoing Premier, which is a business-as-usual approach. So effectively we regard this as a caretaker period, and we guard against, or, rather, try and maintain, a situation in which the government of the day—shortly not to be the government of the day—does not take any moves that would bind the future government.

That's the intent of the informal protocols. They are written loosely, but they are very well understood as part of Westminster-type bureaucracy. So we treat the outgoing Office of the Premier as a caretaker period and essentially deal with the incoming Office of the Premier as a preparing to govern, both in terms of machinery of government and in terms of broad policy or operational issues.

Mr. Steven Del Duca: Right. So, physically speaking, the two administrations, the outgoing and the incoming, would actually work out of separate offices. Is that correct?

Mr. Peter Wallace: They would. That's correct, yes.

Mr. Steven Del Duca: Can you talk a little bit or describe what that separation looks like and speak to that division of physical space?

Mr. Peter Wallace: I don't actually spend a lot of time on the issues of physical space or those things, and I appreciate the orientation of the question, but I can provide relatively little detail. I know that there was a transition suite associated with the incoming Premier. I know there was a suite dedicated to the offices of the outgoing Premier. I know that the break was relatively rigid, but I'm afraid I don't know anything about the physical space or the exact dates involved. That's information we can provide, but it's something that I didn't pay attention to.

Mr. Steven Del Duca: Thank you. I want to move on to talk a little bit or provide some clarity regarding when the Ontario Provincial Police investigation was made public. So much has been made in this committee about when it was known that the OPP were actually conducting an investigation. In fact, after Mr. Nicholl testified at committee last week, one of the opposition members noted in a media scrum that he found it quite interesting that Mr. Nicholl had noted that a lot of people knew that there was an OPP investigation going on. He went on to say that it was troubling that a lot of people knew about the OPP investigation but that it didn't come to light.

In fact, it is clear that the existence of an OPP investigation was public knowledge virtually from the beginning. We know, for example, that on June 6, 2013, the Progressive Conservative Party asked the OPP to look into the case of the deleted documents regarding the gas plants. The very next day, the OPP announced their intention to launch an investigation, and we have articles dated June 7, 2013, which state that the OPP confirm that an investigation has commenced.

If you can let us know, when did you and the rest of Cabinet Office first become aware of the police investigation?

Mr. Peter Wallace: I would have become aware through—the rest of Cabinet Office I can't speak for, but obviously, we were not given a heads-up by the members of the opposition. We became aware of it coincident with their public announcement.

Mr. Steven Del Duca: So it's fair to say that you found out about the timing of the commencement of the investigation sort of when the rest of the public would have, through the media?

Mr. Peter Wallace: Obviously, we found out about the opposition request for an investigation, and we found out about the OPP's acceptance of that investigation at the same time those were broadly known to the public.

Mr. Steven Del Duca: Thanks very much.

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca, once again, the Chair extends an invitation to you to confine your remarks to the mandate of the committee. Please continue.

Mr. Steven Del Duca: Is there anything else you'd like to add in this first round of questioning? No. Thanks very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca.

To the PC side: Ms. MacLeod.

Ms. Lisa MacLeod: Thanks very much. Welcome to the committee, Mr. Wallace. I apologize that I wasn't here at the very beginning. A little matter of a \$2-million lawsuit kept me away for a short period of time.

You said earlier that Kathleen Wynne asked you for passwords to Dalton McGuinty's staff's former computers. Could you provide me with a date of when that took place, please?

1600

Mr. Peter Wallace: Absolutely. Just to be very clear about that, that's with respect to the production of documents that were provided to this committee—but I'm happy to do that.

Ms. Lisa MacLeod: What was the date?

Mr. Peter Wallace: I don't know the date offhand.

Ms. Lisa MacLeod: You don't? But you can provide that to me?

Mr. Peter Wallace: Absolutely.

Ms. Lisa MacLeod: When you spoke earlier with the Premier, did you indicate that this odd arrangement with Peter Faist and David Livingston had occurred?

Mr. Peter Wallace: No, I did not.

Ms. Lisa MacLeod: You did not? You didn't consider that to be a breach of your duty to report any unfortunate incidents within the former Premier's office?

Mr. Peter Wallace: Two critically important points here, one of which is that this is with respect to the management of political records. Formally, I would not have anything to do with that. Informally, of course I would have considered that to be simply appalling, had I known and had I not disclosed that. But of critical importance: I did not know that.

Ms. Lisa MacLeod: During the discussions that we've now learned about in the OPP ITO—there seem to have been a number of various meetings between yourself, David Nicholl and several other bureaucrats. At any period in time, did you notify Dalton McGuinty that this was happening and that this odd request from David Livingston was being made?

Mr. Peter Wallace: No, I did not.

Ms. Lisa MacLeod: Why?

Mr. Peter Wallace: Chiefs of staff—and I think this is true nationally—operate with the consent and under the direction of their first ministers. Cabinet secretaries do not reach beyond chiefs of staff.

Ms. Lisa MacLeod: But deputy ministers and cabinet secretaries are about maintaining the right and being right and ensuring that institutions and the right of the institution is protected, and that there are no breaches not only of law, but that those breaches would be reported. Did you not find it necessary at any point in time to go to Dalton McGuinty or to Kathleen Wynne to explain that this was happening?

Mr. Peter Wallace: I did not, and I'm happy to explain why. You've had an opportunity to review the Premier's office records retention schedule. You will

understand two critical things associated with that: I am responsible for the cabinet records; the Premier's office is responsible for their political records. It does, in fact, contemplate, and it is actually entirely permissible, for the Premier's office to deal with their records as they feel fit once they have maintained and once they have undertaken all of the activities to preserve the appropriate records under the schedule—

Ms. Lisa MacLeod: But you knew that that wasn't going to happen because you even said in the ITO that you were thinking it was very strange that they didn't follow the rules, but you weren't going to write a memo because nobody would be that stupid. Apparently, we've met stupid, and it was the former Premier's office. But I digress.

I have a real issue: that there appeared to be this breach happening and no one decided to make it vocal, not even you—twice—to this committee previously, where you had two five-minute statements in order to clear the air and indicate that to my colleagues, as well as to the public.

I have one final question, and then my colleague Mr. Fedeli will finish up. What is the normal transition period from any Premier with respect to their hard drives? Are they locked away?

Mr. Peter Wallace: They are. They are, as I understand it, and I may need to seek technical advice on this and write technically to the committee. I'd ask you to invite me to do that.

We don't have a huge number of transitions in an era of computers, but as I understand it, the practice has been, as the Premier's office finishes with the hard drives, to take them into the secure custody of Cabinet Office. I believe that happened in 1999—I understand that; I'm not 100% certain of that—and I believe that happened again this time around. I believe that's why Cabinet Office officials were able to retain them.

I do need to step back, because you did ask a vitally important question. You did start off your remarks, and I appreciated it, with a brief apology for not being here, so you will respectfully understand that the question you asked, the implication you provided was one that had already been asked. The reason I did not provide additional information to the committee is because I did not understand at that time that the passing comment by Mr. Livingston was actually anything serious.

Ms. Lisa MacLeod: Okay. But it was. It turned out to be. Now—

Mr. Peter Wallace: And I learned that—and it's very clear, and I rely on the ITO—through the police investigation. And when I learned that this had in fact happened, my shock and my concern—

Ms. Lisa MacLeod: And can I ask you a quick question on this?

Mr. Peter Wallace: —and my language was crystal clear.

Ms. Lisa MacLeod: Sure, except I think there's still a lack of clarity coming from all corners on this. So my final question—because I do have a supplementary. In

reading your previous testimony, you talked about an investigation by the Attorney General's office into a bureaucrat at the Ministry of Energy with respect to some documents being withheld. I'm wondering, given what we know now with the breach within the cyber security unit within your department: Have you or Kathleen Wynne ever decided to undertake an internal investigation into how this has happened and how it cannot happen again?

Mr. Peter Wallace: I'm sorry. I'm frankly not aware of any breach within the cyber security unit.

Ms. Lisa MacLeod: Well, Peter Faist walked into the Premier's office, accessed 24 computers, wiped some of them, and now we have an ongoing OPP investigation. So I think there—

Mr. Peter Wallace: That's not a breach within the cyber security unit. You will understand, and it has been clearly established by my earlier testimony, unchallenged, that the accountabilities for the use of anything, whether it's a credit card, an expense claim, severance, compensation—anything we administer on behalf of the Premier's office—reside clearly with the Office of the Premier. If there were breaches that took place, and I understand fully the serious allegations made by the OPP, and I am very concerned about that—

Ms. Lisa MacLeod: So it would be safe to say, then, that, no, an internal investigation was not done by you with what happened in the Premier's office?

Mr. Peter Wallace: Absolutely not—

Ms. Lisa MacLeod: Okay.

Mr. Peter Wallace: —because I have no authorities whatsoever with respect to the Office of the Premier.

Ms. Lisa MacLeod: Thank you.

Mr. Peter Wallace: The Office of the Premier is overseen by the Office of the Premier, not by the secretary of cabinet. That is a vital distinction, and one I would appreciate being maintained.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much. Mr. Wallace, you mentioned in the first 20 minutes that you and the transition chair, Monique Smith, talked a lot at length. Was there discussion regarding the privilege, as well as gas plant—

Mr. Peter Wallace: Remind me what you mean by “the privilege.”

Mr. Victor Fedeli: The point of privilege brought by member Leone, which triggered the whole gas plant—

Mr. Peter Wallace: Yes. Absolutely, yes.

Mr. Victor Fedeli: So can you describe the nature of those discussions—and I think we've got about two minutes.

Mr. Peter Wallace: We would have provided extensive information on the nature of the privilege, the advice we had offered to the previous administration with respect to the management of their records, the legal advice—the advice that had been offered to the previous Minister of Energy and so forth. A great deal of that information—all of that information and advice, to the

best of my knowledge—has in fact been disclosed to this committee.

Mr. Victor Fedeli: The management of their records: What specifically was discussed with respect to the management of their records?

Mr. Peter Wallace: Specifically, everything from soup to nuts. We would have been very, very clear about the obligations as we understood them under law to this committee—not to this committee; sorry. To the earlier committee. My apologies.

Mr. Victor Fedeli: You also mentioned when we left off that you gave a password to Wendy Wai.

Mr. Peter Wallace: I did not personally give a password to Wendy Wai—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Peter Wallace: —but the password was provided to Wendy Wai, yes.

Mr. Victor Fedeli: Who did you provide the password to?

Mr. Peter Wallace: I did not provide a password to that. Just to be really clear on this—

Mr. Victor Fedeli: Oh, you gave the access.

Mr. Peter Wallace: —I gave—so once the decision was raised to my level, it becomes de facto my decision. I had no reason and no capacity to block it, the password provided. I did not say, “Give the password to pass it to Wendy Wai,” but it was provided to Wendy Wai.

Mr. Victor Fedeli: And this was not just an administrative password, but it turned into a global password, as I understand it?

Mr. Peter Wallace: It turned into a more powerful vehicle.

Mr. Victor Fedeli: And do you know who gave that password to Wendy Wai?

Mr. Peter Wallace: I don’t actually know the individual involved, but I understand that the password was—it came from Mr. Nicholl.

Mr. Victor Fedeli: I’m sorry?

Mr. Peter Wallace: From Mr. Nicholl, I believe.

Mr. Victor Fedeli: And when you learned of this whole thing, what was your reaction?

Mr. Peter Wallace: I learned of it through discussions with the OPP and subsequently confirmed through the information to obtain.

Mr. Victor Fedeli: And what did you do about it?

Mr. Peter Wallace: I was very, very disappointed—

Mr. Victor Fedeli: And what did you do in terms of other computers that may or may not—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. To the NDP side: Mr. Singh.

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Mr. Jagmeet Singh: Yes, if you could just finish that question: What did you do with respect to any other computers?

Mr. Peter Wallace: I’m learning of this far past the time when I have a practical impact on the computers themselves, so I did what would be expected of me, which was to put in place a screen between Mr. Nicholl, cyber security and the information management aspects of the Ministry of Government Services.

Mr. Jagmeet Singh: What was the screen?

Mr. Peter Wallace: The screen is, those report directly to the deputy minister, and one of them reports directly to a different assistant deputy minister.

Mr. Jagmeet Singh: Why did you do that?

Mr. Peter Wallace: Because I was very disappointed at the advice I received. I was deprived of an opportunity to make additionally clear—and I think it is completely clear—that as I became aware of any of the risks associated with the management of the political records of the Premier’s office—notwithstanding the fact that I have no direct accountability for them; I am aware of the broader public interest issues of these—I took significant steps to ensure that they were aware of their accountabilities. Had I known what I know now to be clear, I would have, of course, made abundantly obvious what is abundantly obvious—that you can’t use outsiders—and I would not have authorized any access in addition to the access or the privilege already in place.

Mr. Jagmeet Singh: Thank you very much. I’m just going to set up a scenario for you here—

Mr. Peter Wallace: Why would, I in a context of business as usual? The only reason I pulled together the meeting, the only reason I took the extraordinary step of pulling together a meeting to deal with what otherwise would be a simple request for a credit card or a privilege, was because I wanted to attend as closely as I possibly could to the business-as-usual convention of transition, and I am sorely disappointed that we were not able to do that.

Mr. Jagmeet Singh: Thank you for making that clear. I just want to clarify a couple of points here. One is, you became aware—and these are straightforward things just summarizing what you said—that there were some significant problems with respect to the record-keeping on the political side, though that wasn’t your responsibility as a member of the OPS, but you did recognize that there were some significant problems with record-keeping when it came to the political side. Is that correct?

Mr. Peter Wallace: There are two issues at play here. Broadly speaking, I am aware of what every member of this and other committees of legislators—

Mr. Jagmeet Singh: Just in the interest of time, you were aware of concerns, right?

Mr. Peter Wallace: There’s a difference between the disclosure of records associated with the gas plants, OPS versus the political side. I was also, at the very end, during the transition period, aware that there were requests that raised broader issues, which I addressed.

Mr. Jagmeet Singh: Okay. One of the things that you indicated in the ITO is that one of your responsibilities is to continually and regularly advise the Premier’s office and to provide them with any assistance to facilitate their work. Is that a fair assessment of your job?

Mr. Peter Wallace: That’s correct.

Mr. Jagmeet Singh: One of the things that you raised—and I think you did a great job in doing so—was the concern, and I’ll paraphrase, that the only organizations that don’t maintain records are essentially criminal

organizations. Rightly so, you were raising the issue that if you don't have records, then you aren't able to show that you didn't do anything wrong, and if challenged with allegations of improper activities, you can show and point to some evidence and say, "No, no. I didn't. Here is the evidence and here is the chain of events." Is that correct?

Mr. Bob Delaney: Chair, on a point of order.

The Chair (Mr. Shafiq Qaadri): Point of order, Mr. Delaney.

Mr. Bob Delaney: What is this hypothetical speculation intended to achieve? I would like the gentlemen to show how it, in any way, relates to the agenda.

Mr. Jagmeet Singh: I'm just saying—

The Chair (Mr. Shafiq Qaadri): Thank you. Just a moment, Mr. Singh.

Thank you for your comment, Mr. Delaney. We're mindful of the mandate. We'll let you continue, Mr. Singh, but we are listening intently.

Mr. Jagmeet Singh: Sure. I hope you all are. That's what you indicated, that obviously it's very important to keep records and that the only organizations that don't are criminal organizations, for the reasons I put out.

Mr. Peter Wallace: Here is what's happening here. I owe a broader duty of care to the Office of the Premier. I owe a broader duty of care to the public of Ontario. I understand and appreciate the niceties of their records versus my records and I will rely on that as I need to in terms of formal accountabilities, but this is not where I want to rest or where I want to spend my career. I took it upon myself, in the most blunt terms, to save David Livingston from himself in this context. I thought that the idea, at this late stage, given the intensity—

Mr. Jagmeet Singh: Sorry. My question was just that it's important—you did indicate that it is important—

Mr. Peter Wallace: I did. Given the intensity of the interest in records management issues more generally, the idea that a Premier's office would ask me for additional incremental passwords or anything like that, and might use those to eliminate information off a hard drive of any description, would leave them open to an adverse inference. In order to get David, who is not an inherently political person—he's a business guy—in order to give him an understanding of what that might look like, I explained to him as clearly as I could what it would look like if they left behind an office that had no records. And I don't mean no transitory records; I mean no records retained within the context of the Premier's office records retention schedule.

So I did two things. I reached out to him verbally, and I explained to him—an effort to save him, an effort to give him some knowledge that I had. I'm experienced; he was less experienced in these areas. I gave him the benefit, in the most graphic way, of my experience. Once I had given him that benefit, I am compelled to share that benefit with the Ontario Provincial Police, and the Ontario Provincial Police put that in the ITO. That is as it should be. That is the functioning of the investigation working as it should be. But I shared that with him.

Similarly, I then thought, "We need to document this. We need to make clear, and we need to lay very clearly the accountability on his shoulders." Again, that is confirmed by the information to obtain. The information to obtain clearly indicates that our efforts, in a Cabinet Office context—not in anger, but in sorrow, frankly—to ensure that the Premier's office was aware and that that was documented, were very, very clear. So I used strong language and great clarity in order to make that clear.

Mr. Jagmeet Singh: Sure.

Mr. Peter Wallace: I had no visibility into the idea that, really, somebody might reach outside the Ontario public service—

Mr. Jagmeet Singh: Thank you very much for that, sir.

Mr. Peter Wallace: —sorry—reach outside of individuals who are sworn or who otherwise have access.

Mr. Jagmeet Singh: Thank you very much for that, sir. You indicated before that to understand the problems that were going on with respect to the political side, the best place to make those inquiries would be of the political staff, of that office, and to ask, essentially, then-Premier McGuinty's staff at the Premier's office, to understand the full level of what was going on there. Is that correct?

Mr. Peter Wallace: If anybody wants to understand the relationship, or the rationale, of the former Premier's office and its records, I'm not, with respect, the person to answer that question.

Mr. Jagmeet Singh: Exactly.

Mr. Peter Wallace: It would be the holders of those records. It would be those who were clearly defined in law and by convention with that accountability, which would be the members themselves.

Mr. Jagmeet Singh: Exactly. You raised your concern—did you raise your concerns with Monique Smith in terms of the record-keeping component?

Mr. Peter Wallace: We raised the very broad concerns around, "The Legislature's going to come back. The Legislature's going to be demanding answers; they're going to be demanding documents. You need to be ready. You need to have an appropriate and legally defensible answer to those. Your guys did not leave you in the best of positions with respect to that document, and here's how you might get yourselves in a better position."

We absolutely had that conversation with them. We did not have a conversation with them about the specific behaviours of the former Premier's office. If they wanted to discover those, they can discover those from the former Premier's office.

Mr. Jagmeet Singh: Did you suggest that she—exactly what you stated—did you suggest, in order to find out the full scope and nature of the problem, that Ms. Smith speak with McGuinty's office or the folks who were involved in Premier McGuinty's office?

Mr. Peter Wallace: I did not feel that was necessary.

Mr. Jagmeet Singh: Okay.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Jagmeet Singh: Do you think that in order for Premier Wynne to have understood the circumstances of what needed to be fixed, she needed to have consulted with, or at least have her office connect with Premier McGuinty's office, to understand the level to which the record-keeping was abysmal?

Mr. Peter Wallace: That's a speculative question. What I can answer is that we provided them with a great deal of information in order to fulfill the requirements to the Legislature, and then they did work hard through us to fulfill those specific requirements to the Legislature.

Mr. Jagmeet Singh: But you're not aware, one way or the other, of whether or not Premier Wynne spoke with or had her staff speak with folks at the ex-Premier's office?

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Mr. Peter Wallace: I would not expect to be aware, nor am I aware.

Mr. Jagmeet Singh: Last question, if I can squeeze it in: You indicated that you learned from Mr. Hume about Ms. Miller's intention to involve her life partner in terms of the email deletion. How did you learn of that?

Mr. Peter Wallace: No, that's not—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh.

Just before I offer the floor to the Liberal side, I would just remind committee members that within your phrasing of the questions, whether it's "alleged," "criminal," "criminality," etc., these are still subjects before the courts and the OPP investigation. I just call your attention to that.

The other thing, also: We seem to be quite active with our speculative questions, which are neither material to this committee nor necessarily to be answered by the witness, especially when we're asking our witnesses to comment on mindsets and motivations of others who are not present. Just be mindful of that, committee, please.

To the Liberal side: Mr. Del Duca.

Mr. Steven Del Duca: I don't have a lot of questions left for the final round here. I did want to go over some territory because I thought I had clarified it the last time I had the opportunity to speak, but it came up again in questioning from both the Conservatives and, to an extent, indirectly, from the NDP as well.

Just to make sure that there is absolute clarity around this fact, because I believe Ms. MacLeod asked you to provide information relating to when requests might have come from Premier Wynne's office with respect to passwords: As I said earlier in my first round of questioning, I want to clarify that on May 7, 2013, this committee passed a document production motion seeking all gas plant documents from the Premier's office. On May 21, 2013, Tom Teahen, Premier Wynne's chief of staff, wrote to this committee in response to that particular request. I want to quote from the letter from Mr. Teahen, which I have a copy of here and which I believe the committee has a copy of. In fact, the letter was written to the Clerk:

"In addition, on May 9th, we were advised by Cabinet Office IT that the email accounts of 52 individuals

formerly employed in the Premier's office could be accessed. A search of those accounts was conducted by my office and any available records, applicable to the committee's motion, have been included. I have enclosed with this letter a list of the 52 individuals." That is from that letter from Mr. Teahen. Again, when you said earlier in the very first round of questioning, I believe in your response to the Tories, that Premier Kathleen Wynne's office requested access, it was, in fact, to complete the search of those accounts in response to the request from this committee. Is that correct?

Mr. Peter Wallace: That is correct.

Mr. Steven Del Duca: Again I will say, because Mr. Singh tried repeatedly—unfortunately, not caught by the Chair in time—to suggest a whole bunch of things that are not necessarily accurate or true, that in that particular request, 30,000 documents were provided from the Premier's office, and generally speaking—

Mr. John Yakabuski: Point of order.

Mr. Steven Del Duca: —since the very beginning, 391,707—

The Chair (Mr. Shafiq Qaadri): Just a moment—

Mr. Steven Del Duca: —documents have been provided.

Mr. John Yakabuski: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, point of order.

Mr. John Yakabuski: Yes. Thank you very much. I had to wait for Mr. Del Duca to turn off the radio.

Mr. Steven Del Duca: Well, you didn't say the magic word.

Mr. John Yakabuski: He's making accusations against a member of this committee, Mr. Singh—

Mr. Steven Del Duca: And the Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. Mr. Del Duca, I once again invite you to observe parliamentary language. I do understand that there are contentious issues, but if we could at least show each other decorum and respect in this committee.

Mr. John Yakabuski: Thank you very much, Chair.

The Chair (Mr. Shafiq Qaadri): Please, Mr. Del Duca, continue.

Mr. Steven Del Duca: As I was saying in my last sentence, the 30,000 documents that were produced as a result of that particular correspondence are part of the 391,707 documents that have been provided to this committee since it began its work.

I thank you very much for being here with us today, Mr. Wallace.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca, for your questioning, and thank you, Mr. Wallace, for your presence. You are officially dismissed.

I'd just inform members of the committee that the justice policy committee, in its use of moral suasion, has persuaded Mr. Peter Faist to actually make himself available. I'll let Ms. Pomanski give you the details of that.

The Clerk of the Committee (Ms. Tamara Pomanski): We've heard back from Mr. Faist's lawyer, and

they're recommending a video conference for May 13. I just need direction from committee on that.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, then Mr. Tabuns.

Mr. Victor Fedeli: I have a question for the Clerks or yourself, Chair. Was it Ben Chin who we had here at the committee when I was involved that did a video conference?

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes, correct. We did a conference.

Mr. Victor Fedeli: Do I recall that when they took the oath, it did not apply here? Do I remember that?

The Chair (Mr. Shafiq Qaadri): I believe you are correct, Mr. Fedeli, that the Standing Committee on Justice Policy of the government of Ontario's jurisdiction is in Ontario. So if the testimony is out of that jurisdiction, neither the Speaker's warrants nor oaths etc. apply; is that correct?

Mr. Peter Sibenik: I believe that is correct, but I'm going to recheck what we did on that particular occasion and get back to you.

Mr. Victor Fedeli: Yes, I appreciate that, because I seem to recall rolling my eyes when we were told that the oath that would be taken by videoconference by Mr. Ben Chin in British Columbia—

The Chair (Mr. Shafiq Qaadri): The committee would never wish to induce you to roll your eyes, Mr. Fedeli.

Mr. Victor Fedeli: Well, I remember doing that. It's been a while since I've been at the committee, but I do recall that the oath did not count. Thank you.

The Chair (Mr. Shafiq Qaadri): Correct. Mr. Tabuns and Mr. Yakabuski.

Mr. Peter Tabuns: I look forward to Mr. Sibenik's comment on this, but frankly, if that's the case, it reinforces my feeling that he has to be here in person so that we can actually question him in a way that is more appropriate. It was very difficult to question Mr. Chin. I thought it was an inadequate forum.

As I've said to others, there are regularly scheduled flights between here and British Columbia; I'm sure he can find one. He should be here under oath, testifying in person.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Mr. Yakabuski and Mr. Singh.

Mr. John Yakabuski: Yes, I share those concerns, Mr. Chair. I recall the testimony of Ben Chin. With all due respect, the importance of his to this committee was far less than the concern we have with Mr. Peter Faist.

Once we received the sworn information to obtain from the OPP, it was clear that Mr. Faist was an absolutely central character. He is the person who has alleged to have actually done the deed of deleting these hard drives. This is the guy who wiped out the information that we're talking about.

Having a videoconference with him from British Columbia without having the assurance that he's taken an oath, sworn an oath that his testimony will be the truth, the whole truth and nothing but the truth, would actually

render this committee worthless because—I believe it's a stunt, quite frankly, on his part. There's no reason why, if Laura Miller can get to Toronto to testify, Peter Faist can't as well. It just clouds this whole investigation. Actually it's an insult.

He's aware of the rules, as we are, and I believe Mr. Sibenik will confirm this because I recall quite clearly at the time that Ben Chin testified that was the case, to the best of my knowledge and understanding. If that applies here with Mr. Faist, then his testimony is of little use to the committee by videoconference. It must be in person, and we have to take every step—and I reiterate that this has become, in my opinion, a Premier-to-Premier issue. Kathleen Wynne, if she believes this is important, and Peter Faist's testimony is important—Mr. Del Duca talks about open government and accountability and transparency. If we're going to get to the bottom of this, Peter Faist must appear before this committee.

I again reiterate, a letter should go from Kathleen Wynne to Premier Clark in British Columbia stating in the strongest possible terms that we require the co-operation of Laura Miller's boyfriend.

The Chair (Mr. Shafiq Qaadri): So a few things, Mr. Yakabuski—we appreciate your enthusiasm for our next witness. A couple of things: Mr. Peter Faist does not actually work for the government of British Columbia—

Mr. John Yakabuski: But his girlfriend does.

The Chair (Mr. Shafiq Qaadri): —and, therefore, likely the jurisdiction of Premier Christy Clark does not extend this capacity—

Mr. John Yakabuski: Perhaps they can use moral suasion.

The Chair (Mr. Shafiq Qaadri): —to every citizen. I would very much encourage everyone here to use moral suasion.

Secondly, I take it from the committee that we may be ready to reimburse reasonable costs—modest meals, no alcohol—for Mr. Peter Faist to transport the gentleman here. Alternatively, I think the committee may be considering taking the entire committee to British Columbia, if that's in order.

But in any case, Mr. Tabuns?

Mr. Peter Tabuns: Mr. Chair, first, I think that, given the distance travelled, it would make sense for us to have not just an hour-and-a half session but two sessions when Mr. Faist appears, and we have in fact had precedent for that previously.

I would move that this committee request that Mr. Faist appear in person and that the Clerk report back on reimbursing those reasonable expenses that you have outlined.

The Chair (Mr. Shafiq Qaadri): Fine. I don't think we need a full motion for that; we just need agreement of the committee, and that letter can be executed instantaneously.

Are there any further comments? Yes, Mr. Delaney.

Mr. Bob Delaney: Our colleague has simply asked the committee to do what it already has the power to do anyway.

The Chair (Mr. Shafiq Qaadri): Sorry, Mr. Delaney. Once again?

Mr. Bob Delaney: My colleague Mr. Tabuns has merely asked the committee to do what it already has the power to do anyway.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. The letter to be executed to Mr. Faist: Mr. Singh.

Mr. Jagmeet Singh: One, I think we should certainly have a letter indicating—and it should be worded quite clearly and with some firm language—

The Chair (Mr. Shafiq Qaadri): Moral suasion, Mr. Singh?

Mr. Jagmeet Singh: —that the committee is requesting that Mr. Faist attend here in person, and also convey that we are willing to accommodate reasonable expenses as well. That should be clear.

The other issue is that even if—that's our first and foremost request. I shall leave it at that.

The Chair (Mr. Shafiq Qaadri): Thank you. But just to continue your point, as was mentioned in committee last time, for example, the extraordinary rendition—meaning physically, actually acquiring somebody, whether it's through the OPP or a Speaker's warrant and so on—that jurisdiction does not extend to outside of Ontario, just to be clear about that. Having said that, the letter will be executed to Mr. Faist's lawyer and so on.

There is one further issue with regard to Mr. Livingston and—

Mr. John Yakabuski: I have a question.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Yakabuski.

Mr. John Yakabuski: Supposing that, as the result of other testimony before this committee and the ongoing police investigation, it was determined—and I am speculating here—that Mr. Peter Faist was now the subject of a criminal investigation, I do expect that the OPP could compel him to return to Ontario. Is that true?

The Chair (Mr. Shafiq Qaadri): It's not a question for the justice policy Chair.

Mr. John Yakabuski: I'm just speculating. But my friend Mr. Singh: He's a lawyer. He might be able to help me with that.

Mr. Jagmeet Singh: Sorry, what was your question?

Laughter.

The Chair (Mr. Shafiq Qaadri): Thank you. We have some Mr. Livingston-related correspondence. The letter to Mr. Faist, full of moral suasion, will be executed imminently.

Go ahead.

The Clerk of the Committee (Ms. Tamara Poman-ski): I have received a letter from Mr. Livingston's lawyer because I gave options, again, to appear before committee. His lawyer would like to discuss issues arising out of the investigation and our invitation to his client with our committee counsel, whenever we appoint

it. So at this point, he'd like to speak with our committee counsel, I guess, before looking into appearing before committee.

The Chair (Mr. Shafiq Qaadri): Who has, as yet, not been appointed.

The Clerk of the Committee (Ms. Tamara Poman-ski): Right. That's the latest from Mr. Livingston's lawyer, as of April 14.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments before the committee adjourns? Yes, Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, this looks to me like a stall, frankly. I think that Mr. Livingston should appear before this committee. He has legal counsel already. He has retained legal counsel. He would appear before us fully advised as to what his rights and responsibilities are. I think we should tell him that he's quite welcome to talk to any counsel when one is appointed, but we want him to come before this committee sooner rather than later.

The Chair (Mr. Shafiq Qaadri): Your thoughts and desire are noted, Mr. Tabuns, but—

Mr. Peter Tabuns: And my hope is that the committee would convey that to Mr. Livingston.

Interjection.

Mr. Peter Tabuns: No. If he has refused to come forward, then I think we should go forward in compelling him to attend.

The Chair (Mr. Shafiq Qaadri): Ms. Thompson.

Ms. Lisa M. Thompson: Chair, we just chatted about it, and we concur with Mr. Tabuns. We don't want to waste any time. We have to get down to the bottom of this. He has had adequate time, and we're not going to allow him to spin the committee's wheels. We have business to do here and he's not going to delay it.

The Chair (Mr. Shafiq Qaadri): Thank you. Procedurally, I might then invite the committee to proceed with getting our legal counsel appointed.

Mr. Peter Tabuns: I gather that is the subject of business before us?

The Chair (Mr. Shafiq Qaadri): Incidentally, for that purpose, we've been trying to get a subcommittee, but obviously, with greater events—the passing of the honourable Jim Flaherty etc.—that's been put on hold. I would suggest next week.

Mr. Peter Tabuns: Is the subcommittee not meeting immediately after this committee?

Ms. Lisa MacLeod: No, the official opposition is departing for the viewing.

Mr. Peter Tabuns: I understand that.

The Chair (Mr. Shafiq Qaadri): The subcommittee, Mr. Tabuns, is so far tentatively scheduled for next Tuesday.

Is there any further business before this committee? Thank you, colleagues. Committee is adjourned.

The committee adjourned at 1635.

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**Legislative Assembly
of Ontario**

Second Session, 40th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 40^e législature

**Official Report
of Debates
(Hansard)**

Thursday 17 April 2014

**Journal
des débats
(Hansard)**

Jeudi 17 avril 2014

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

Privilèges des députés



Chair: Shafiq Qadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 17 April 2014

Jeudi 17 avril 2014

The committee met at 0832 in committee room 2.

MEMBERS' PRIVILEGES

MR. SHAWN TRUAX

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, Mr. Shawn Truax, IT forensics coordinator at the cyber security branch, Ministry of Government Services.

Mr. Bob Delaney: Chair, before we get under way, we have, at the last few meetings, discussed a motion that the committee has adopted regarding the hiring of external legal counsel.

Chair, I think at this point, with the existence of an OPP investigation and other parallel committee proceedings, it's incumbent on us to actually take some action and appoint this legal counsel.

May I ask the Chair what specific steps we're going to take to do this? Because I think this step is going to be necessary before the committee proceeds.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

Mr. Delaney, is it suitable to you that we (a) consider that question after the presentation of today's witness, and (b) at a subcommittee meeting that we have, in fact, been trying to arrange for some time?

Mr. Bob Delaney: Yes, it is.

The Chair (Mr. Shafiq Qaadri): There you go. We thank you for your acquiescence.

I would now invite our presenter, Mr. Shawn Truax, as introduced previously, IT forensics coordinator, cyber security branch, Ministry of Government Services, to be affirmed.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Shawn Truax: I do.

The Chair (Mr. Shafiq Qaadri): Welcome, Mr. Truax. Your five-minute introductory remarks begin now.

Mr. Shawn Truax: Thank you. My name is Shawn Truax. I am employed in the cyber security branch of the Ministry of Government Services as the IT forensics coordinator. In my role I am responsible for overseeing

the work of the IT investigators in the cyber security branch.

The IT forensics team provides three primary services to the ministries of the Ontario government.

The first, IT forensic investigative services: We support internal investigations undertaken by ministries into inappropriate conduct, including improper use of government assets, violations of workplace policies etc. Our work is initiated at the request of the chief administrative officers of the ministries. We assist with internal investigations by securely collecting, preserving and analyzing data from a variety of IT assets, such as hard drives, network drives, removable media, email and cellular phones.

The second service we offer is electronic discovery services, also known as e-discovery. We assist ministries with the identification, collection, search and production of electronic records and data that are required for litigation for both civil and criminal matters. In this regard, our branch has assisted with the search and production of records for this committee by the Ministry of Energy and the Ministry of Government Services.

Third, payment card infrastructure scanning: We assist ministries by ensuring that they properly safeguard credit card data in order to maintain compliance with the standards established by the PCI Security Standards Council.

I have been an employee of the cyber security branch since 2002. My background includes a degree in computer sciences. When I joined the forensics team, I initially trained with the OPP e-crime branch to learn electronic investigation methodology.

I have used this training to help develop the MGS IT forensics team, beginning in 2006. I became a team coordinator in 2009. In the 12 years I have been with the branch, I have both led and coordinated many internal investigations. I have also provided IT forensics training to members of law enforcement.

The IT forensics team has a working relationship with other forensics teams and law enforcement agencies, both in Ontario and federally, and has provided investigative supports to ministries who are assisting with external law enforcement investigations.

We also support investigations into threats to public officials. As part of this relationship, we were asked to assist Cabinet Office with the OPP investigation described in the ITO.

I would be pleased to answer any questions, where I can, about this matter.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Truax.

The floor goes to the NDP, to Mr. Tabuns. Your 20 minutes begin now.

Mr. Peter Tabuns: Thank you, Chair. Mr. Truax, thank you for being here this morning. We appreciate it.

Mr. Shawn Truax: Thank you.

Mr. Peter Tabuns: Can you describe the work done by the cyber security branch with regard to the identification and the securing of the computers?

Mr. Shawn Truax: Yes. We worked with information technology services, and in any investigation, we would need to reach out to various areas within the IT infrastructure. We would then, using their assistance, identify the assets that would be in scope to an investigation. We would then move to collect those assets in a manner consistent with a forensic investigation.

Mr. Peter Tabuns: What exactly were you looking for when you were looking at these assets? Because I gather there were 52 computers, and you identified 24 that were of interest.

Mr. Shawn Truax: Specifically, what we were looking for was on the hard drives. We were asked two questions. We were asked to determine all assets used by Jason Lagerquist and Lauren Ramey, and we were asked to determine all assets accessed in the Office of the Premier by Wendy Wai.

Mr. Peter Tabuns: And what did you find?

Mr. Shawn Truax: We found—and it's in the ITO, the list of 24 computers. We identified which computers Jason Lagerquist and Lauren Ramey had accessed, and we also identified the 24 computers accessed by the account for Wendy Wai—not specifically her, but specific to the account.

Mr. Peter Tabuns: Right. And how did you find them?

Mr. Shawn Truax: How did we find the accounts? We would access the computer. Within the operating system, there's an area that stores all the user accounts that log into the machine. We collected a copy of that list and then we presented it in a readable format in our report. It's a very technical listing.

Mr. Peter Tabuns: Okay. When was the cyber security branch asked to investigate computers in the Premier's office—around what time?

Mr. Shawn Truax: We were officially requested on September 5, 2013.

Mr. Peter Tabuns: Were you unofficially requested earlier than that?

Mr. Shawn Truax: Before September 5, 2013, and within the scope of our investigations—it's a bit different than a criminal investigation, because the assets are owned by the government of Ontario. We do have a practice that if we believe there are assets that may be involved in an investigation, we can move to secure those assets ahead of time while a determination is made whether to proceed with an investigation, or what specifically the request is going to be. To that nature, we began collection of IT assets on the 14th of August 2013.

0840

Mr. Peter Tabuns: And were you requested at August 14, 2013, to do this by the OPP, by a minister or a ministry? Who initiated it on August—

Mr. Shawn Truax: August 14?

Mr. Peter Tabuns: Yes.

Mr. Shawn Truax: Within my role, it's not uncommon for people to call and ask for advice. During August 14, there was a request, as part of a transition, I believe. I'm not clear on the specifics of what was happening around August 14. I had a conversation with information technology services, where they needed to decommission some computers. During that conversation, "gas plants" was mentioned. Obviously, with my work in e-discovery, I knew that that was a keyword for me to key in on. At that point, I provided advice that we'd better be cautious and collect these in a manner that's appropriate in the event that they might be relevant.

Mr. Peter Tabuns: What was the name of the person in IT services who reached out to you on this?

Mr. Shawn Truax: At this point, I don't know. I couldn't recall.

Mr. Peter Tabuns: Can you remember what rank they were?

Mr. Shawn Truax: It was not very high up.

Mr. Peter Tabuns: Okay. They were talking to you about an unrelated problem when the gas plants issue came up. Can you tell us what that conversation was that triggered in your mind the need to take action?

Mr. Shawn Truax: I don't recall the exact conversation, but as soon as I heard the words "gas plants," that's when I said, "We might want to provide you some assistance here," in just picking up and retrieving the assets in the event that they do need to be searched for any reason, because we were, at that point, working on records production.

Mr. Peter Tabuns: Okay. So you were working on records production with relation to this inquiry at that time?

Mr. Shawn Truax: Yes. We were providing assistance to the Ministry of Government Services for records.

Mr. Peter Tabuns: And, in the course of this conversation, the computers in the Premier's office came up specifically then?

Mr. Shawn Truax: No. This office was in Ottawa. I don't know the specific nature of what activities occurred in that office.

Mr. Peter Tabuns: I apologize. I'm just trying to understand. You were having a routine conversation with someone in IT services about records production.

Mr. Shawn Truax: No, not about records production; about the decommissioning of hard drives.

Mr. Peter Tabuns: The decommissioning of hard drives. Throughout the civil service?

Mr. Shawn Truax: No. Just with one specific office.

Mr. Peter Tabuns: And that specific office was—

Mr. Shawn Truax: In Ottawa. I don't know the exact location.

Mr. Jagmeet Singh: Whose office?

Mr. Shawn Truax: My understanding was, it's a satellite office that officials could use when they go to Ottawa.

Mr. Peter Tabuns: And did you—

Mr. Shawn Truax: One-eighty Elgin.

Mr. Peter Tabuns: I'm sorry?

Mr. Shawn Truax: I believe it was at 180 Elgin Street.

Mr. Peter Tabuns: And they were decommissioning hard drives at this office in Ottawa.

Mr. Shawn Truax: Yes.

Mr. Peter Tabuns: The person who was talking to you mentioned gas plants in what context? Do you remember?

Mr. Shawn Truax: No, I don't recall. It was a very quick conversation on the phone. It happened fairly quickly. At the end of the conversation, I provided advice that we should send a team member up and pick up those hard drives.

Mr. Peter Tabuns: And, in fact, was that done?

Mr. Shawn Truax: Yes.

Mr. Peter Tabuns: Were a number of those hard drives part of this body of evidence?

Mr. Shawn Truax: Yes. They were reviewed as part of the body of evidence.

Mr. Peter Tabuns: Okay. Were any of those hard drives actually accessed by Wendy Wai? Do you remember?

Mr. Shawn Truax: I believe there was one.

Mr. Peter Tabuns: There was one.

Mr. Shawn Truax: One. I'd have to review my notes in order to determine, but I believe there was one.

Mr. Peter Tabuns: Can I just ask, through the Chair, Mr. Truax, if you could check your records and give the information back to the committee as to which one that was—who the user was?

Can you tell us here what was found on that computer? Did you check for anything other than access by the Wendy Wai password?

Mr. Shawn Truax: No. Specifically, what we checked for was—and I'm going to use a technical term here—we checked the Windows registry for the name of the computer, the asset tag. We checked the Windows registry for all user accounts, past and present. Then we checked the event logs on the computer to determine if there were any dates and times of log-ins. Those are the only three things, which satisfied the request for access as outlined to us.

Mr. Peter Tabuns: I apologize; had Wendy Wai's log-in been used on that computer in Ottawa?

Mr. Shawn Truax: I believe so. Again, I'll check my notes.

Mr. Peter Tabuns: If you would double-check and, through the Chair, provide us with that information.

Mr. Shawn Truax: Yes. I'll be able to tell you specifically which one it is.

Mr. Peter Tabuns: So, effectively, on August 14, in the course of a chance conversation, you became aware

of the potential for the decommissioning of a number of computers that might have been related to the gas plant matter. Is that correct?

Mr. Shawn Truax: Yes.

Mr. Peter Tabuns: So you initiated a check at that point, or did you talk to someone else?

Mr. Shawn Truax: No, we just moved to collect the drives and then waited to determine what to do next.

Mr. Peter Tabuns: So you collect the drives through the Premier's office, as well as this drive in Ottawa?

Mr. Shawn Truax: Yes.

Mr. Peter Tabuns: When you were starting to collect drives in the Premier's office, did anyone say to you, "Why are you clearing out all these hard drives?"

Mr. Shawn Truax: When we collected the hard drives that had come from the Premier's office—I refer to the statement made in the ITO, and I apologize that I don't have the exact page. The hard drives, as far as I understand from reading the ITO, were removed as part of the transition and put into storage. We arrived and retrieved them from storage. We were not in the office with a screwdriver.

Mr. Peter Tabuns: That gives a graphic image.

Mr. Shawn Truax: Yes.

Mr. Peter Tabuns: By mid-August of last year, all of the hard drives that had been in the computers in the Premier's office had been taken out of the computers and were being held securely. Correct?

Mr. Shawn Truax: The last hard drives were retrieved on the 8th of October 2013.

Mr. Peter Tabuns: Oh. Okay.

When you came to get the hard drives in August, you got the ones that had already been taken out of computers in the Premier's office.

Mr. Shawn Truax: In August, we collected the ones from the Ottawa office. On August 30, we collected the hard drives that had been removed from the Premier's office. Then, on October 8, there was an additional pickup of hard drives that were located.

Mr. Peter Tabuns: On August 30, where did you pick up these hard drives from? Where, physically, were they held?

Mr. Shawn Truax: They were held with ITS. Their office is in Whitney Block.

Mr. Peter Tabuns: Okay. And the one that you picked up on October 8: Where was it? Who was holding it?

Mr. Shawn Truax: On October 8?

Mr. Peter Tabuns: Yes.

Mr. Shawn Truax: Those ones were being held by Thom Stenson. I didn't—

Mr. Peter Tabuns: Thom Stenson?

Mr. Shawn Truax: Yes. I should go back and correct one thing.

Mr. Peter Tabuns: Sure.

Mr. Shawn Truax: I did pick up a hard drive for David Livingston from Cabinet Office, so likely there were four pickups.

Mr. Peter Tabuns: Okay. And when did you pick up the one from Cabinet Office?

Mr. Shawn Truax: The 26th of September 2013.

Mr. Peter Tabuns: Okay. You're assembling all of these computers. On September 5, did you get a request from the OPP in this matter?

Mr. Shawn Truax: Yes. We received a request from the CAO. As I said in my opening statement, we would work with the CAO's office of whatever ministry it is to facilitate their needs with regard to an investigation.

Mr. Peter Tabuns: And did you spend time after October 8 working on this matter?

Mr. Shawn Truax: After October 8, we provided our final draft—well, the information we had; it wasn't final at that point, but we provided our report to the OPP on February 10 for them to review.

0850

Mr. Peter Tabuns: February 10 of this year?

Mr. Shawn Truax: Yes, 2014.

Mr. Peter Tabuns: Are you still working with the OPP on this matter? Or is it entirely in their hands?

Mr. Shawn Truax: They've not made any further requests. The investigation is essentially on hold or pause for us. They're doing a review now, as I understand, at OPP e-crime. It's possible that they may come back with additional questions.

Mr. Peter Tabuns: Mr. Singh?

Mr. Jagmeet Singh: With respect to the computer that was seized from Cabinet Office: Did you search and obtain any contents from that computer?

Mr. Shawn Truax: No. As I said, we're searching for the access of accounts.

Mr. Jagmeet Singh: Okay. Did you search the access of accounts on that computer?

Mr. Shawn Truax: Pardon me?

Mr. Jagmeet Singh: Did you search the Windows registry for a name, account information or event logs on the David Livingston computer?

Mr. Shawn Truax: Yes.

Mr. Jagmeet Singh: And what did you obtain, again?

Mr. Shawn Truax: So, as outlined on page 23 of the ITO, we were able to determine that the Wendy Wai user account had been used on that computer. If you read further down, it's not one of the four that we were able to retrieve dates and times for.

Mr. Jagmeet Singh: So you were able to obtain the information that the Wendy Wai password was used, but not when it was used—the dates and times.

Mr. Shawn Truax: But not when it was used. Correct.

Mr. Jagmeet Singh: The report that you mentioned that was provided to the OPP—just to understand the content of that report. Maybe you could explain to me in general. I understand that it had, essentially, these three components that you search in the Windows registry the name of the computer itself, the account information, in terms of the log-in, and then event logs, in terms of when the computer was logged in to. Was that the extent of the report?

Mr. Shawn Truax: I'm trying to remember everything you just listed off there. We also determined the asset tag for it, so we would know what computer it was assigned to.

Mr. Jagmeet Singh: Right, okay. Those were the three things that you had listed before—were there four, or were there three?

Mr. Shawn Truax: It should be four things. I believe I listed three, and then just the asset tag name. And you read in the ITO where it says "assigned to." All that asset tag does is determine that.

Mr. Jagmeet Singh: And so this report outlines, basically, in detail those components that we just went over right now—those four components.

Mr. Shawn Truax: Yes.

Mr. Jagmeet Singh: And you've provided it to the OPP? Is that correct?

Mr. Shawn Truax: Yes.

Mr. Jagmeet Singh: Have they indicated to you in any way if that report should remain sealed with just the OPP, or is it something that you are able to table with the committee?

Mr. Shawn Truax: I wouldn't know, based on speculation—I've never had a conversation with them. I would say that the report is with the OPP. It's not my place to determine what should be released.

Mr. Jagmeet Singh: Sure. Not the question of whether it should be released or not—I'm not putting that on you. Just, if you were given any sort of indication from the OPP that this report should not be provided to anyone else or should be—

Mr. Shawn Truax: I've never had that conversation with them.

Mr. Jagmeet Singh: Do you know if anyone else would have had any sort of conversations around whether that report should be released or not?

Mr. Shawn Truax: No, I would not have had any conversations about that.

Mr. Jagmeet Singh: Sure. Thank you. In terms of any other involvement that you had, in terms of your investigation, was there any other scope of your investigation? Were there any other assets that you looked at in relation to the gas plants?

Mr. Shawn Truax: No. For the specific request, it was the 52 hard drives that we looked at.

Mr. Jagmeet Singh: In terms of the recovery of emails or the recovery of data, did you have any part to play in the actual attempt to recover data?

Mr. Shawn Truax: With regard to the OPP investigation?

Mr. Jagmeet Singh: With regard to the 54 computers, beyond the four things that you searched for, did you do anything around recovering data on those computers?

Mr. Shawn Truax: No.

Mr. Jagmeet Singh: Are you aware of anyone else in either the cyber security branch, or any other ministry or public service branch that was involved in data recovery?

Mr. Shawn Truax: No.

Mr. Jagmeet Singh: Are you aware of why the Cabinet Office had Mr. Livingston's hard drive? You

indicated that you were able to obtain one hard drive that was associated with Mr. Livingston. Why was it in the—

Mr. Shawn Truax: It was provided to us by the OPP so that we could essentially do the whole thing as one go.

Mr. Jagmeet Singh: Okay. So the OPP gave you the David Livingston hard drive?

Mr. Shawn Truax: The OPP gave Linda Jackson the hard drive—sorry, the CAO of Cabinet Office, and then the CAO of Cabinet Office provided it to me as part of our collection.

Mr. Jagmeet Singh: I understand. Sorry, who is the CAO?

Mr. Shawn Truax: The chief administrative officer.

Mr. Jagmeet Singh: I understand. Were there any other offices? You indicated there was an Ottawa office. That was a satellite office.

Mr. Shawn Truax: I referenced the Ottawa office as a satellite office.

Mr. Jagmeet Singh: That was a satellite office.

Mr. Shawn Truax: It's the same thing.

Mr. Jagmeet Singh: Yes, the same thing. That's what I'm saying.

Mr. Shawn Truax: Okay. Sorry, I thought you were listing two—

Mr. Jagmeet Singh: No, no, that's one. I was just being more thorough. Any other offices that you retrieved hard drives from that you didn't get to mention so far?

Mr. Shawn Truax: No, only the Ottawa, the ITS offices in Whitney Block, and the CAO of Cabinet Office.

Mr. Jagmeet Singh: Sure. Is it possible that there are any other computers that were accessed by the Wendy Wai password that we haven't yet come across?

Mr. Shawn Truax: We did a very comprehensive search. If there are, I don't have any knowledge of them.

Mr. Jagmeet Singh: Okay.

Mr. Peter Tabuns: When you said you did a comprehensive search, a comprehensive search of computers in the Premier's office or accessible to the Premier's office—

Mr. Shawn Truax: Yes, the 52.

Mr. Peter Tabuns: So you didn't do a search in any other ministry, like the Ministry of Energy, MGS?

Mr. Shawn Truax: No.

Mr. Peter Tabuns: Just the Premier's office.

Mr. Shawn Truax: Just the Premier's office.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Tabuns. To the government side: Mr. Delaney, 20 minutes.

Mr. Bob Delaney: Thank you very much, Chair. Good morning, Mr. Truax. Thank you for being here. You're witness number 88. I'm not sure whether or not that's a lucky number.

Mr. Shawn Truax: I hope that's a lucky number.

Mr. Bob Delaney: I'm not sure that eights are lucky in Chinese culture. But in any event, the numerology aside, just to begin by bringing us back to basics, the committee's work is to examine the relocation of two

gas-fired peak power electricity generating plants in Mississauga and Oakville. Although you covered a little bit of your background in your opening statement, for which I thank you, I have just a couple of clarification questions about your work history and your career at OPS. How long have you worked in the Ontario public service?

Mr. Shawn Truax: For 12 years.

Mr. Bob Delaney: Okay. What kind of education does it take to become a forensic coordinator?

Mr. Shawn Truax: I have a bachelor of science degree, and in addition, I have college training.

Mr. Bob Delaney: Your BSc: Was it in fact in computer science?

Mr. Shawn Truax: Yes, it was a bachelor of science of computers.

Mr. Bob Delaney: Where did you study?

Mr. Shawn Truax: Wilfrid Laurier University.

Mr. Bob Delaney: A good school for it.

Mr. Shawn Truax: Thank you.

Mr. Bob Delaney: And your college diploma was at?

Mr. Shawn Truax: Georgian College, in Barrie.

Mr. Bob Delaney: Along the way, do you have any other certifications from Microsoft, from any of the other vendors?

Mr. Shawn Truax: I'm a certified EnCase examiner. EnCase is a specific product that we use. I'm certified in the tool.

Mr. Bob Delaney: In other words, certified by the vendor?

Mr. Shawn Truax: Yes.

Mr. Bob Delaney: Okay. When did you obtain that?

Mr. Shawn Truax: Recently, actually—this year or last year. I'd have to double-check.

Mr. Bob Delaney: No, that's fine. Is it a long program?

Mr. Shawn Truax: I've taken probably about 10 courses to reach this point, for certification, and I have done them over the years, to build up to that certification.

Mr. Bob Delaney: All right. You mentioned that some of the information which you had supplied formed part of the information-to-obtain, or ITO, document. Is that the reason that your name is among many mentioned in that ITO?

Mr. Shawn Truax: Yes.

Mr. Bob Delaney: Okay. A few weeks ago, we had Commissioner Duval, who came before the committee, and he in fact discussed the ITO, the information-to-obtain document, in detail. When he was here, he confirmed that the fact that an individual's name, such as yours, is listed in the ITO doesn't mean that you've either committed a crime or engaged in any wrongdoing. Does that pretty much jibe—

Mr. Shawn Truax: That's my understanding as well.

0900

Mr. Bob Delaney: Okay. In fact, Commissioner Duval made it very clear that the investigation was into allegations against the former chief of staff to the former Premier and stated that the investigation "centred on the

actions of David Livingston only.” So with the information that you provided further to that ITO, was that the focus as well?

Mr. Shawn Truax: Our focus was to determine access of the hard drives.

Mr. Bob Delaney: Commissioner Duval also commented on the full co-operation that individuals in the government have provided to the Ontario Provincial Police and stated, “It is my understanding, however, that the OPP has received co-operation from senior government officials in this matter.” Could you confirm with the committee that you’ve been fully co-operative during the investigation?

Mr. Shawn Truax: Yes.

Mr. Bob Delaney: Have you had a large role or was it just providing some information?

Mr. Shawn Truax: The only role I had was with regard to the search of the 52 hard drives for the two items, determining—

Mr. Bob Delaney: Okay. We’ve had a number of people testify at the committee—as I said, you’re number 88—including the current Premier twice, the former Premier twice, the Minister of Energy twice, and former cabinet chair Peter Wallace three times, and even the two OPP officers both testified not merely on what they know but on the rarity of making an appearance before a committee. What do you make of being invited here today?

Mr. Shawn Truax: This is my first time at a committee. Thank you.

Mr. Bob Delaney: Well, if you’re really good, Lisa may even invite you back. I’m not sure.

Ms. Lisa MacLeod: You’re doing a great job. If you were doing bad, I’d invite you back.

Mr. Shawn Truax: It would all depend on what you want to talk about, I guess.

Mr. Bob Delaney: Wait; you haven’t yet been asked about wind turbines.

Interjection.

Mr. Bob Delaney: Oh, okay. Shucks.

All right. Just to begin by—

The Chair (Mr. Shafiq Qaadri): Colleagues, we appreciate the pillow talk, but—

Mr. Bob Delaney: Okay. Just to move back to the Information and Privacy Commissioner’s recent report on record-keeping, on page 6 of the report, Dr. Cavoukian states, “Throughout this entire investigation, my office received the full co-operation of all parties involved, including the Premier’s office, Cabinet Office, the MGS, current and former staff in the Minister of Energy’s office, and the Archives of Ontario staff.”

When she testified before the committee, she told us, “This government, with respect to my investigation and the work that we have done with the government, has been very forthcoming,” and she also said that “any co-operation we needed was there.”

Are you able to speak about the co-operation and the support that you provided to the Information and Privacy Commissioner and her office throughout that investigation? Did you have any role at all?

Mr. Shawn Truax: I did not have any role in that.

Mr. Bob Delaney: Do you have any reason to believe that the Ministry of Government Services has intentionally left out any information pursuant to anything asked by the Information and Privacy Commissioner?

Mr. Shawn Truax: No.

Mr. Bob Delaney: Have you had any conversation with political staff prior to appearing today, people who may have directed you in either what to say or what to refrain from saying?

Mr. Shawn Truax: No.

Mr. Bob Delaney: Have you ever met someone named Peter Faist?

Mr. Shawn Truax: No.

Mr. Bob Delaney: Have you ever met Laura Miller?

Mr. Shawn Truax: No.

Mr. Bob Delaney: At any point leading up to your testimony today have you ever encountered any form of interference by anybody in the government?

Mr. Shawn Truax: No.

Mr. Bob Delaney: A few questions, then, about record-keeping.

There has been some in-depth discussion about what records over the past year either should or shouldn’t be kept, and at one point last summer we spent a fair amount of time discussing, in fact, what records must be deleted. So let’s just go down that to ensure that we have some degree of clarity.

We know that the Archives and Recordkeeping Act explains that transitory records are not required to be retained. There’s a protocol called the Common Records Series that defines those records as “records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record....”

When we asked Secretary Wallace about his personal experience with transitory records, he said, “From the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant.”

Does that characterize “transitory records” from your experience working in government?

Mr. Shawn Truax: Could you rephrase that question?

Mr. Bob Delaney: Okay. What I had read out is a quote from Secretary Wallace from the Cabinet Office. What I was asking is, how do you view what transitory records are?

Mr. Shawn Truax: Any record that I would create or receive would not contain any information, in my specific case, relevant to an investigation or any other of the services that we offer. For example, a message to my manager saying, “I’m on my way to the meeting”: I would not typically keep those. But with the nature of the

work I do, the majority of the records that I receive or create are recorded; we need to for purposes of maintaining records for investigations.

Mr. Bob Delaney: The reason I ask is that clarity around this issue is very important. We began, at least, with a misconception that every piece of paper needed to be kept, and that certainly isn't true, is it?

Mr. Shawn Truax: I can say that I don't keep every single piece of paper.

Mr. Bob Delaney: You would agree, then, that the notion of keeping every record, every correspondence, isn't the purpose of either the freedom-of-information legislation or archive legislation. Right?

Mr. Shawn Truax: I have not read either of the legislations in detail, so I don't know that I can provide—

Mr. Bob Delaney: If you haven't read it, then don't guess.

There's an important designation also for private records. I'm going to just walk you through this: On page 9 of the Information and Privacy Commissioner's report, she outlined two general categories of records in the office of a minister and the Premier. They are (1) public records and (2) personal, political or constituency records. It goes on to explain that "Ministers' and the Premier's personal, political or constituency records are those generated by ministers in their capacity as members of the Legislature and as private citizens."

Would you have any knowledge about what these personal or political records may be, and whether or not they're required, under the Archives and Recordkeeping Act, to be retained—

Mr. Shawn Truax: I would have no knowledge.

Mr. Bob Delaney: That's fine. That's fair.

Recently, the Minister of Government Services introduced legislation that, if passed, would strengthen political accountability, enhance oversight and increase transparency, both across government and in the broader public sector. Are you familiar with any initiative by the Minister of Government Services in this regard?

Mr. Shawn Truax: I'm aware of the legislation but not of any of the specifics—just what I've read in the news.

Mr. Bob Delaney: All right. Well, let's walk down it a bit. If we get to a point where it's really not up your alley, you can stop me and we'll just move on to something else.

The proposed legislation would build on the province's Open Government Initiative and continue to demonstrate that the new government is looking forward with regard to accountability to Ontarians. Although the legislation has been in the works for some time, speaking from your own experience and bearing in mind that the legislation hasn't yet been formally introduced, I'd just like to explore a sense of how you see the impact of this type of openness and transparency on the government relative to what you do, because you're there to look at or look for information that's retained in an electronic format on government hardware. Again, just for clarity, you don't go searching for information that is maintained

or stored in anything other than an electronic format. Correct?

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Mr. Shawn Truax: Correct.

Mr. Bob Delaney: Okay. What kind of an impact would opening up what's kept stored and made available have on behalf of outsiders to government? Any thoughts on that?

Mr. Shawn Truax: Thought-wise, during my university education, I did take courses in cartography as sort of an interest. I have been to the Open Government website, and I can say, just based on that, I do find it's very helpful. There's a lot of information there. I wouldn't specifically use it in my line of work, but it's definitely interesting.

Mr. Bob Delaney: So from the vantage point of an outsider, we would be talking more about the value of data—you talked about cartographic data—or data, perhaps, relating to program usage or information or other things that government normally measures.

Mr. Shawn Truax: Yes.

Mr. Bob Delaney: Okay. Would this be a challenge for the public service; in other words, exposing data that could or might be useful to the general public while trying to find a balance between that and protecting the ability to think through a policy or correspondence back and forth between and among people in the public service?

Mr. Shawn Truax: I wouldn't know.

Mr. Bob Delaney: Okay. Would it be a major shift in the way the government operates in terms of its accountability now?

Mr. Shawn Truax: I don't know if I could provide a comment. Sorry.

Mr. Bob Delaney: That's fine. I'm going to walk down a couple of other things, and again, if these are not within your area of expertise, just say so.

There have been a number of reports released during the life of this committee: two Auditor General reports; the report issued by the Information and Privacy Commissioner, which we've discussed; and the Independent Electricity System Operator and the Ontario Power Authority issued a report that includes 18 recommendations on new siting practices for large energy infrastructure projects in the province, all of which have related to the work that this committee does. I'm making what I think is a reasonable assumption, that you haven't been following reports pertaining to the location and siting of energy infrastructure in the course of your normal job.

Mr. Shawn Truax: No.

Mr. Bob Delaney: I didn't think so. To date, the government has been proactive about putting in place rules to ensure that staff keep all of those things that are required to be kept but only those things that are required to be kept. Do you have any thoughts around the retention of information by people who work in the government and by staff of the government?

Mr. Shawn Truax: No, I don't.

Mr. Bob Delaney: Chair, I think I'm going to stop there on my first round.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side: Ms. Thompson.

Ms. Lisa M. Thompson: Thank you very much. Welcome. We've been very much hooked into your comments today. In particular, I'd like to go back and revisit some of the things that you were talking about with regard to the Ottawa office. You mentioned that you accessed a computer from 180 Elgin Street, and it was a satellite office.

Mr. Shawn Truax: Yes.

Ms. Lisa M. Thompson: To be clear, this was not a constituency office.

Mr. Shawn Truax: I'm not aware of what the exact role of the—

Ms. Lisa M. Thompson: I can tell you, this is not a constituency office. It was not in the Premier's riding. It was actually a ministerial regional office that the Premier could use. Okay?

Mr. Shawn Truax: Okay.

Ms. Lisa M. Thompson: All right. It's interesting. With that, you went on to say that Wendy Wai's global administration access password was used in this office.

Mr. Shawn Truax: Again, I'll have to check for that.

Ms. Lisa M. Thompson: Okay. When did you take this particular hard drive?

Mr. Shawn Truax: We collected the drives on the 14th of August 2013.

Ms. Lisa M. Thompson: The 14th of August 2013—that would have been immediately following the by-election in Ottawa.

Mr. Shawn Truax: Okay. I don't know the exact dates.

Ms. Lisa M. Thompson: Do you know who this particular computer was assigned to?

Mr. Shawn Truax: I'd have to look at specifically which one it was.

Ms. Lisa M. Thompson: Could you do that please?

Mr. Shawn Truax: Yes.

Ms. Lisa M. Thompson: Thank you. And report back to the committee.

Are you aware of or do you know how many employees worked at this regional office in August 2013 or prior to?

Mr. Shawn Truax: No, I have no idea.

Ms. Lisa M. Thompson: So you can't confirm today that the hard drive you took was John Fraser's computer?

Mr. Shawn Truax: No, I can't. I'd have to check.

Ms. Lisa M. Thompson: Okay, you'll check your records. But just for the benefit of our committee colleagues here, the satellite office at 180 Elgin Street was the office that John Fraser worked at prior to the by-election in 2013. We look forward to you confirming this for the committee.

Is there anything else we need to ask there?

Ms. Lisa MacLeod: I just think that it's very important to recognize that this was not a constituency office. Mr. McGuinty's constituency office was on Kilborn Avenue in Ottawa South, and this regional office on 180 Elgin Street is across from city hall in Ottawa and

typically used for the Premier's day-to-day operations. That's very significant, and I think that that hard drive is going to be incredibly important, Mr. Truax. So if you could provide us with the details of what you mentioned in the communication between you and Mr. Singh, I think that information is going to be very critical, personally, for the Progressive Conservatives as well as the rest of the committee. If you could report back to the committee within a week.

Mr. Shawn Truax: Okay.

Ms. Lisa MacLeod: Thank you.

Ms. Lisa M. Thompson: Just to confirm, you'll provide the details that we're looking for in terms of who used that hard drive within a week?

Mr. Shawn Truax: Yes. I don't have—I'd have to go through the list here and determine—

Ms. Lisa M. Thompson: Okay, that's fine. A week, I'm sure, is adequate.

Mr. Shawn Truax: Okay.

Ms. Lisa M. Thompson: Thank you very much. Let's go on and talk about a bit of testimony that we have in the ITO. On two occasions, there's a particular tool that was referenced, a Dell tool. In line 1010 of the ITO, it says: "Mr. Gitt also discovered that a software tool was used on both desktop computers, it seemed that the tool came from the computer company Dell ... Mr. Gitt was unable to explain the purpose of the Dell tool but stated that it was not used by the information technology services."

My question to you, Mr. Truax, is: Are you familiar with the tool in question here? And if you are, can you please provide us with a description of its function and purpose?

Mr. Shawn Truax: I'm a little uncomfortable with the question. The OPP is investigating into the use of the tool. I'd be a bit uncomfortable getting into—

Ms. Lisa M. Thompson: Okay. Well, this is all information coming out of the ITO.

The Chair (Mr. Shafiq Qaadri): Ms. Thompson, again, I'd just respectfully request you to please come within the mandate, the point being that when we stray into the OPP issue, we trigger radioactivity.

Ms. Lisa M. Thompson: Okay. Fair enough. On page 30, line 1535, it goes on to say: "Mr. Gitt also expressed concerns that the local profiles were deleted improperly on the two desktop computers. He also discovered that a tool"—again—"was used on both desktop computers, it seemed that the tool"—he's very consistent—"came from the computer company Dell." Again, who authorizes the purchase of these types of tools? Can you confirm?

Mr. Shawn Truax: I would have no knowledge of procurement.

Ms. Lisa M. Thompson: Okay. Can you tell us who authorizes procurements of computer tools?

Mr. Shawn Truax: I know that when I need to buy something, I talk to my manager, and then after that, how the process works is—

Ms. Lisa M. Thompson: Okay. And your manager is?

Mr. Shawn Truax: Sorry, the name of my manager?

Ms. Lisa M. Thompson: Yes.

Mr. Shawn Truax: David Cullen.

Ms. Lisa M. Thompson: All right. Just to go back, you have no knowledge of this particular tool and you have no knowledge at this time of who procured this tool?

Mr. Shawn Truax: I have no knowledge of who procured the tool. I have knowledge of the tool based on the ITO. Beyond that, I'm a little uncomfortable answering.

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Ms. Lisa M. Thompson: Okay. Based on the knowledge that you received out of the ITO, what came to mind? When you reviewed the ITO and saw that a tool was purchased, what came to mind in terms of evidence or data being destroyed or what that tool might be used for?

Mr. Shawn Truax: What came to mind—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Thompson. Once again, requesting a witness to comment on an ITO police document which is subject to an active OPP investigation is not welcome. So please, I'd just once again invite you to return to this—

Ms. Lisa M. Thompson: Okay. Fair enough. We'll go away from that, then, at the direction of the Chair.

In your opening comments, you also mentioned that your branch assists in civil and criminal matters. Have you participated in activities like that?

Mr. Shawn Truax: Yes, as a forensic coordinator, I would be involved—

Ms. Lisa M. Thompson: Can you just describe what you would do in an activity like that?

Mr. Shawn Truax: Sure. With regard to civil or—

Ms. Lisa M. Thompson: Criminal.

Mr. Shawn Truax: For criminal?

Ms. Lisa M. Thompson: Yes.

Mr. Shawn Truax: With criminal matters—there are two means that usually trigger when we go into criminal. During the course of an IT investigation conducted by the staff at the IT forensics team, we may find evidence that suggests that something has criminally occurred. Then, working with the ministry, we would assist to help them report that.

The second would be similar to this, where the OPP are coming to the government of Ontario and requesting information. Again, we're assisting the ministry and providing that information back that they need.

Ms. Lisa M. Thompson: Okay. Can you describe the reporting protocol that you would use?

Mr. Shawn Truax: We, as I stated in my opening statement, would go through the CAOs of the ministries to establish that reporting protocol.

Ms. Lisa M. Thompson: So you work with the various ministries. Do you work with community safety and correctional services as well?

Mr. Shawn Truax: Yes. It's the ministry—

Ms. Lisa M. Thompson: That's the ministry that you're referencing. Okay. So then—

Mr. Shawn Truax: Sorry. The ministry that I'm—I'm referencing all ministries.

Ms. Lisa M. Thompson: All ministries, yes. Okay.

With that said, it's interesting, when we're doing our background work—in August 2012, there was an article by Mark Bonokoski, August 12, 2012, titled, "McGuinty's Cruellest Cut of All." It goes on to talk about, in August 2012, August 14, to be specific—the article says, "There are good cuts in government, and there are bad cuts." But this "is outrageous."

Then the article went on to say, "The employees at the Centre of Forensic Sciences now facing unemployment do not grow on trees. They are highly educated in computer sciences, mathematics and criminology, and skilled in retrieving data from files that have been erased or deleted from the electronic devices of suspected criminals, and that includes computers and cellphones that have been heavily damaged."

Interjection.

Ms. Lisa M. Thompson: I was just going to ask—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney on a point of order.

Mr. Bob Delaney: What does this have to do with the committee's mandate?

Ms. Lisa M. Thompson: May I ask my question?

The Chair (Mr. Shafiq Qaadri): You can ask the question.

Ms. Lisa M. Thompson: I was just wondering: Based on these cuts made at the Centre of Forensic Sciences of highly skilled people specialized in "retrieving data from files that have been erased or deleted"—did any of those folks happen to apply to your branch or your particular unit? Are you aware of anything like that?

Mr. Shawn Truax: I'm not aware of any.

Ms. Lisa M. Thompson: Okay. In your expertise—

The Chair (Mr. Shafiq Qaadri): Ms. Thompson, I'd request you, respectfully, to please bring it to the scope of the mandate. I do appreciate that there are a lot of gymnastics and intellectualizations going on here, but we need it to be relevant.

Ms. Lisa M. Thompson: Okay. In your expertise, do you think this was a calculated step or just coincidence that the Premier, back in August 2012, made cuts to a significant area of forensic sciences that specialized in retrieving data?

Interjections.

The Chair (Mr. Shafiq Qaadri): Point of order. Mr. Delaney, and also from—

Mr. Bob Delaney: Chair, this is an allegation that is well beyond the scope of the committee and asks a witness who is not able to speculate on what the motives may have been about an action asserted to be true by Ms. Thompson.

The Chair (Mr. Shafiq Qaadri): Ms. Thompson, it is without the scope of this committee. Please continue.

Ms. Lisa M. Thompson: Okay. I'm going to pass it to Lisa.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod.

Ms. Lisa MacLeod: Thank you, Mr. Truax. I do appreciate this.

I want to go back to this Ottawa computer that, as I've stated before, was not in the constituency office of Dalton McGuinty, MPP; it was in his regional office, as Premier of Ontario, which was across the street from Ottawa city hall, in another riding entirely. You were there, and you took computers from that location, apparently because of the OPP search and seizure warrant. Is that accurate?

Mr. Shawn Truax: Sorry, I don't understand.

Ms. Lisa MacLeod: When you took the computer, the hard drive, from 180 Elgin Street, did you take that as a result of the search warrant?

Mr. Shawn Truax: No.

Ms. Lisa MacLeod: You accessed that when it was closed?

Mr. Shawn Truax: Sorry. When what was—

Ms. Lisa MacLeod: When you took that computer, when you went to Ottawa—

Mr. Shawn Truax: Yes—sorry?

Ms. Lisa MacLeod: —what was the purpose of you taking that computer?

Mr. Shawn Truax: The purpose was to collect the equipment—

The Chair (Mr. Shafiq Qaadri): Just a moment, Ms. MacLeod, it's not for you—we welcome members of the press. Just if you would respectfully not actually film the papers on the desk, please. Thank you.

Ms. MacLeod, continue.

Ms. Lisa MacLeod: Thanks. So you were going to collect material?

Mr. Shawn Truax: Sorry. Can you rephrase that question? You've lost me there.

Ms. Lisa MacLeod: Sorry. Yes, I understand. My concern is this computer or the computers that were accessed or picked up by you from this 180 Elgin Street regional office of the former Premier—what was the purpose of going into that office to retrieve those computers?

Mr. Shawn Truax: So, for clarification, I did not personally go to Ottawa; it was a member of the team, just to make sure that that's clear. And, as I indicated, the purpose of that was just during the conversations, gas plants came up, and I provided advice that these could be relevant.

Ms. Lisa MacLeod: So they could be relevant. Does the OPP have those hard drives?

Mr. Shawn Truax: I'd be a little uncomfortable on what they have and don't have.

Ms. Lisa MacLeod: But you didn't hand those over to the Ontario Provincial Police?

Mr. Shawn Truax: Sorry? I did not—

Ms. Lisa MacLeod: You didn't hand over the computers from 180 Elgin Street to the provincial police?

Mr. Shawn Truax: They were part of the 52.

Ms. Lisa MacLeod: They were part of the 52. And you're going to review for us whether or not Wendy Wai's passwords were included on those?

Mr. Shawn Truax: Yes.

Ms. Lisa MacLeod: Would those computers have been disabled after March 2013?

Mr. Shawn Truax: I would not know that. Again, we were only asked two specific questions, and that's the extent of what we've done.

Ms. Lisa MacLeod: And how many computers at 180 Elgin Street, in the former Premier's office where Mr. Fraser worked, were retrieved?

Mr. Shawn Truax: There were five hard drives retrieved from work stations, and one hard drive retrieved from a printer.

Ms. Lisa MacLeod: And you're going to provide us, within seven days, who those hard drives were assigned to?

Mr. Shawn Truax: I will check to determine whether one of the 24 was from that Ottawa office.

Ms. Lisa MacLeod: Okay, fair enough. Can you confirm to us which member of your team picked up those hard drives from 180 Elgin Street in Ottawa?

Mr. Shawn Truax: Sorry?

Ms. Lisa MacLeod: Could you confirm to us who, as a member of your team, would have picked up those hard drives from 180 Elgin Street?

Mr. Shawn Truax: The name of the person?

Ms. Lisa MacLeod: Yes.

Mr. Shawn Truax: The team member who went to Ottawa to retrieve the hard drives, his name is Cody Allan Ferguson.

Ms. Lisa MacLeod: Cody Allan Ferguson. Do you know if Cody also went to the Kilborn Avenue office or just to Dalton McGuinty's former regional office?

Mr. Shawn Truax: I'm sorry, I'm not familiar with Ottawa or the streets.

Ms. Lisa MacLeod: I am.

Mr. Shawn Truax: If I'm ever in Ottawa, I'll call you for—

Ms. Lisa MacLeod: So let's look at it this way: There are two different offices. We'll call the constituency office Kilborn, and we'll call the MRO, or the regional office, Elgin. Do you know if any other computers were retrieved, not only from the Elgin Street office but also from the Kilborn Avenue office, or are you only aware of the Elgin Street office?

Mr. Shawn Truax: I'm only aware of the Elgin Street office.

Ms. Lisa MacLeod: And in that, five hard drives were retrieved and taken back to Toronto?

Mr. Shawn Truax: Yes.

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Ms. Lisa MacLeod: Are you aware of whether or not that office is still open?

Mr. Shawn Truax: No, I am not.

Ms. Lisa MacLeod: You are not. When computers were retrieved, no computers were replaced? They were just taken away from 180 Elgin Street?

Mr. Shawn Truax: We just retrieved the hard drives from the computers at 180 Elgin, and that's it. That's all.

Ms. Lisa MacLeod: With respect to the printer—I mean, this is interesting, the hard drive of a printer. What

would be an imprint? Can you explain to this committee why a hard drive from a printer would be relevant to what we do and would be relevant to hand over?

Mr. Shawn Truax: I wouldn't be able to say. It's our practice to collect everything, and beyond that, I'd get uncomfortable, because the OPP are investigating. We don't know where their investigation is going to lead or what questions they may ask. So I'd—

Ms. Lisa MacLeod: Are you still engaged at all with the OPP in terms of this investigation? I know when Detective Duval appeared before the committee, he said that they were still doing some ongoing work. Would you be somebody who interfaces with him frequently?

Mr. Shawn Truax: Not frequently. If they had any questions, they could by all means come back and talk to us, and we'd be more than happy to provide them answers based on our knowledge.

Ms. Lisa MacLeod: Were you ever approached by any staff of the former or current Premier's office, particularly when you were in Ottawa, on matters of data storage or document deletion or anything to that effect?

Mr. Shawn Truax: Sorry; I was never in Ottawa.

Ms. Lisa MacLeod: You were never in Ottawa. Right. Sorry. Was a member of your team—for example, was Cody Ferguson ever approached about those matters?

Mr. Shawn Truax: Not that I'm aware of.

Ms. Lisa MacLeod: At this point, are you able to find the date and the time the other 20 computers in the Premier's office were accessed with the administrative right given to Wendy Wai and accessed by Peter Faist?

Mr. Shawn Truax: So you're speaking to the—we found 24. We were able to find dates [*inaudible*]. So you're speaking of the other 20?

Ms. Lisa MacLeod: There were dates on four. The other 20, yes.

Mr. Shawn Truax: The request was to determine if we could—sorry; I lost your question there. My apologies.

Ms. Lisa MacLeod: I'm wondering if you were able to find the date of the other 20. There's 24 computers. Four, we know when they were accessed; 20, we don't. Have you, since this investigation has begun, and your internal workings, been able to disclose or identify when the other 20 computers were accessed using Wendy Wai's super global password that was used by Peter Faist?

Mr. Shawn Truax: We performed three tasks to determine access. We have not performed any further tasks beyond that. The OPP are doing their investigation. I would suspect that they could probably answer that question better than I could.

Ms. Lisa MacLeod: I ask you this one in your professional expertise because I'm trying to get a sense of how this super global password would work. I understand that one administrator can log on and access everyone else's desktop. Was it possible for Peter Faist, now that we know that he had this super global password, to sit down at a desktop in the Legislative Assembly on the second

floor here, in the Premier's office, and access the hard drives in Ottawa with that super global password?

Mr. Shawn Truax: My understanding is that the password only applies to the computers in the Premier's office.

Ms. Lisa MacLeod: And if they were part of the Premier's office in Ottawa?

Mr. Shawn Truax: I'd have to think of that one for a second. The administrative rights, as I understand—I'm a little uncomfortable answering the question.

Ms. Lisa MacLeod: Sure. Yes, okay. Thank you very much. I appreciate that. You've been very helpful and you've provided us with a great deal of new information today that has, I think, enlightened this committee. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. To the NDP side: Mr. Tabuns.

Mr. Peter Tabuns: Mr. Truax, a few brief questions. Were you aware of any other regional offices that house computers that were of interest?

Mr. Shawn Truax: No.

Mr. Peter Tabuns: Okay. Again, I think I asked you this before, but just to be certain, who made the official request to the cyber security branch to do this investigation?

Mr. Shawn Truax: The request to go up there—it wasn't an official request. It was a recommendation by our team to collect the drives. At that time, we had no knowledge that there was any investigation going on in any way, but again, because of the work with the standing committee in terms of electronic records, I provided the suggestion that a staff member go up there and get the hard drives.

Mr. Peter Tabuns: And again, who did you make that suggestion to?

Mr. Shawn Truax: To information technology services and through my management.

Mr. Peter Tabuns: So do you know who in fact made that decision?

Mr. Shawn Truax: Who made the specific decision to send staff over there?

Mr. Peter Tabuns: Based on your recommendation, who said, "Yes, go out"?

Mr. Shawn Truax: Oh, I have no idea who. We just received word back to send somebody up.

Mr. Peter Tabuns: Okay. And it was the OPP that made the request in September for you to assemble all of these hard drives; is that correct?

Mr. Shawn Truax: Yes. On September 5, the CAO of Cabinet Office requested that we perform the task. At that point, we had figured out all the pieces of the puzzle and then we had a list of 52, and we went through that list of 52 hard drives.

Mr. Peter Tabuns: Going back, I had understood you'd picked up one hard drive in Ottawa, and I must have misunderstood you, because you now said there were five hard drives. Did you assess five hard drives and find that one was of interest?

Mr. Shawn Truax: Yes. We assessed the five hard drives. Again, I'll have to check what level of those five—of the 52, whether or not they were.

Mr. Peter Tabuns: Okay. If you could check and let us know, I would appreciate that—through the Chair.

On a slightly different tack, you helped with the process of producing documents for this committee.

Mr. Shawn Truax: Yes.

Mr. Peter Tabuns: And you assisted a variety of offices: I assume the Premier's office, the Ministry of Energy and others. Is that correct?

Mr. Shawn Truax: The work that we did with the electronic record discovery for this committee was with the Ministry of Energy and Ministry of Government Services.

Mr. Peter Tabuns: Okay. The other day, Peter Wallace was here and remarked that the level of document production by civil servants was quite substantial, and it was striking to him that the Minister of Energy's office had produced very little. In fact, having sat on this committee, they produced no responsive records whatsoever. Given your experience going through those records, does it strike you as anomalous that they produced little or no records in terms of our request for documentation?

Mr. Shawn Truax: The number of records that get found can vary. I've never seen a consistent number that I would expect. It depends on what you're looking for, essentially; right? If you go on the Internet and Google, you may get a lot of results or you may get a little, depending on what you're looking for.

Mr. Peter Tabuns: I have no further questions on that. Mr. Singh?

The Chair (Mr. Shafiq Qadri): Mr. Singh.

Mr. Jagmeet Singh: Just a better understanding of the cyber security branch: Who manages the cyber security branch?

Mr. Shawn Truax: Who's the director of cyber security?

Mr. Jagmeet Singh: Director, sure.

Mr. Shawn Truax: The director of cyber security branch is Kent Schramm.

Mr. Jagmeet Singh: Okay. And would you report to Mr. Schramm on a regular basis?

Mr. Shawn Truax: Not on a regular basis.

Mr. Jagmeet Singh: Okay. How often would you report to him?

Mr. Shawn Truax: I would see him. He works in the office, but I wouldn't report directly to him.

Mr. Jagmeet Singh: Sure. Who would you report to directly, then?

Mr. Shawn Truax: I would report to my manager directly.

Mr. Jagmeet Singh: Okay. And that's on a regular basis?

Mr. Shawn Truax: Yes.

Mr. Jagmeet Singh: And then you anticipate that your manager would report then on to—

Mr. Shawn Truax: Yes, and then they would go on up, yes.

Mr. Jagmeet Singh: In terms of cyber security branch—to understand the scope of which emails in relation to obtaining the kind of costs that went into this gas plant cancellation—what ministry would the cyber security branch fall underneath?

Mr. Shawn Truax: The Ministry of Government Services.

Mr. Jagmeet Singh: Okay. One of the things that kind of—if I can call it this, and correct me if I'm wrong—tipped off a red flag for you was, in your attempt to provide records in your record production, you noticed that there were some issues around the availability of records. You thought, back on August 14, that maybe we need to keep track of some of these computers—that we might need to investigate them later on.

0940

Am I characterizing that correctly? That is, through your record production or your attempts to produce records, that that got you concerned about the level of records being maintained?

Mr. Shawn Truax: Yes. We were going through record production. I was well aware of the gas plant issue, and then, when gas plants came into the conversation, I said, "Well, if these could be related to the gas plant record production"—I mean, trying to be—

Mr. Jagmeet Singh: No, that's great.

Mr. Shawn Truax: —a good employee, essentially—

Mr. Jagmeet Singh: No, you did a good job.

Mr. Shawn Truax: —just to say, "You know, we might want to go up there and collect those in a proper manner to ensure that, if they are needed for any reason, they're not"—

Mr. Jagmeet Singh: Okay. In your attempts to produce records, did you come across any problems with the fact that there were computers that had been wiped clean, or that there were instances where there was a lack of responsive records in terms of producing records?

Mr. Shawn Truax: With regard to the electronic search for records?

Mr. Jagmeet Singh: Yes.

Mr. Shawn Truax: I would not know that. We identify all the areas to collect records from, and we go collect them. We don't perform any analysis to determine if the count is high or low.

Mr. Jagmeet Singh: I see.

Mr. Shawn Truax: Even if the count was high or low, that wouldn't be an indication that anything was wrong. It could just indicate the level of usage.

Mr. Jagmeet Singh: And, at any point in time, did you, in your own investigation or dealings, come across a problem where you identified that there seemed to be files that were being deleted or had been deleted? Was that something that you came across specifically, or was your focus more so on figuring out who accessed the computers and when?

Mr. Shawn Truax: Sorry; you seem to have asked a two-part question there.

Mr. Jagmeet Singh: Yes. The first part is: Did you come across an instance where you felt that you had

identified a problem in the sense that there was a computer that emails had been deleted from, or that files had been wiped? Is that something that you had identified as a problem?

Mr. Shawn Truax: We didn't perform any analysis on the hard drives to determine that, so I wouldn't be able to comment on what there is. Does that answer both of your questions?

Mr. Jagmeet Singh: More or less. That's good enough. Thank you.

Mr. Shawn Truax: Okay.

Mr. Jagmeet Singh: In your investigation and your dealings, as soon as you made this decision where you thought, "These computers might be related to the gas plants; we should probably hold on to them," did you convey that to anyone outside of the cyber security branch?

Mr. Shawn Truax: I didn't make the decision to hold on to them. I made the recommendation that we might want to hold on to them.

Mr. Jagmeet Singh: Right. Did you make that recommendation to anyone outside of cyber security?

Mr. Shawn Truax: I made that recommendation to my manager. Beyond that, I wouldn't, no.

Mr. Jagmeet Singh: Sure. Was cyber security asked—did you brief, at any point in time, the transition team?

Mr. Shawn Truax: I've never been involved with the transition team.

Mr. Jagmeet Singh: Okay. And did you provide a written report at any point in time outlining—besides the cyber security report that's been referred to, did you provide or prepare any other report?

Mr. Shawn Truax: For the OPP investigation?

Mr. Jagmeet Singh: Right, or in relation to the computers being accessed.

Mr. Shawn Truax: No. The report that we produced for the OPP is the only report.

Mr. Jagmeet Singh: Okay. And you indicated that the only computers that you are aware of were the 52 that you indicated, including the various offices that you talked about. Outside of the computers that you actually searched, are you aware of the existence of other satellite offices that are related to the Premier's office and that the cyber security branch may not have actually had the chance to look at?

Mr. Shawn Truax: I have no knowledge of other offices.

Mr. Peter Tabuns: Have you ever had an investigation like this before in the cyber security branch, where you've had to secure large numbers of hard drives?

Mr. Shawn Truax: We've had other investigations with a number of assets—I don't want to—

Mr. Peter Tabuns: "Assets" is fine.

Mr. Shawn Truax: It's not the norm, but we have experience in dealing with large numbers.

Mr. Peter Tabuns: So you've been involved before in bagging evidence in tamper-proof bags and—

Mr. Shawn Truax: Yes, that's standard practice. Standard forensics procedure for us is to document, inventory, tamper-proof bags, secure.

Mr. Peter Tabuns: Just to follow up on my colleague's comments, setting aside the OPP, prior to August of last year, was there any request to your branch to engage in any investigation of problems with provision of information from the IT assets of the Premier's office or any other office?

Mr. Shawn Truax: With the Premier's office, this is the only investigation.

Mr. Peter Tabuns: So you weren't asked, in the spring of last year, to look into problems with cyber security or the destruction of records?

Mr. Shawn Truax: Sorry, you lost me on the question there.

Mr. Peter Tabuns: Prior to August of last year, let us say, starting from February or March of last year, 2013, was your branch asked, "Do we have a problem with destruction of records?"

Mr. Shawn Truax: I would have no knowledge. I wasn't specifically asked.

Mr. Peter Tabuns: So it wasn't brought to your level.

Mr. Shawn Truax: No.

Mr. Peter Tabuns: And there was no investigation going on, on the part of your branch, about destruction of records or tampering with the information technology systems?

Mr. Shawn Truax: No.

Mr. Peter Tabuns: Was your branch at all aware that an outsider had been involved in the Premier's office prior to the OPP coming to you?

Mr. Shawn Truax: I can only speak to what I know. I know that once the ITO was released, at that point—

Mr. Jagmeet Singh: But prior to the ITO?

Mr. Peter Tabuns: Prior to the ITO.

Mr. Shawn Truax: I think I might have gone too far in my answer. I'm a little uncomfortable now on specifics—

Mr. Peter Tabuns: I'm not interested in the police investigation.

Mr. Shawn Truax: Okay.

Mr. Peter Tabuns: In the spring of 2013, was your branch asked to look into any tampering with information technology, hard drives—

The Chair (Mr. Shafiq Qadri): Thirty seconds, gentlemen.

Mr. Shawn Truax: For the Premier's office?

Mr. Peter Tabuns: Yes.

Mr. Shawn Truax: No.

Mr. Peter Tabuns: Any other office?

Mr. Shawn Truax: I'd prefer not to comment on any other investigation into OPS employees. I wouldn't—

Mr. Peter Tabuns: With regard to the gas plants inquiry?

Mr. Shawn Truax: No, not with regard to the gas plants.

Mr. Peter Tabuns: Sorry, I should have been more specific. If you've got other problems, I'm glad you're

dealing with them. This is the problem I'm concerned with.

Mr. Shawn Truax: Exactly. Specific to this, no.

Mr. Peter Tabuns: That's what I wanted to know.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. To the government side: Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair. We have just a few things to clarify in our last round of questioning.

Mr. Truax, you contributed to some of the information in the OPP's information-to-obtain document; correct?

Mr. Shawn Truax: Yes.

Mr. Bob Delaney: Did you actually get a chance to read the ITO itself?

Mr. Shawn Truax: Yes, I've read through the ITO.

Mr. Bob Delaney: Okay. Chair, I'm going to ask the Clerk to bring to the witness appendix D, which has already been distributed to the committee. I have a question to ask the witness about appendix D of the ITO document.

The Chair (Mr. Shafiq Qaadri): It shall be so delivered.

Mr. Bob Delaney: For committee members, appendix D is a list of the names in the ITO document.

Sir, anywhere in there is the name John Fraser?

Mr. Shawn Truax: No.

Mr. Bob Delaney: Thank you. Just to summarize—

Ms. Lisa M. Thompson: Point of order.

The Chair (Mr. Shafiq Qaadri): Point of order, Ms. Thompson?

Ms. Lisa M. Thompson: The line of questioning that is taking place right now is not in order. It doesn't fall within the mandate of the committee. We're not here to probe the ITO. We're here to probe the retrieval, management and deletion of records. So that is not relevant.

The Chair (Mr. Shafiq Qaadri): Ms. Thompson, your point of order may be valid, but perhaps for reasons other than you've just elaborated there.

Probing with regard to an OPP investigation ITO may not necessarily be in the scope, but I'd invite you to please bring it back to the scope of the committee. Please continue. You have eight and a half minutes left.

0950

Mr. Bob Delaney: Thank you, Chair. Throughout the questioning by the Conservatives, they were dancing around the name of the member for Ottawa South. We have just made sure that in the ITO document, the name of the member for Ottawa South was not mentioned. Indeed, there was a letter dated August 15, 2013, written to this committee and distributed, that shows that the Ministry of Government Services did a forensic scan using all tools available of all possible accounts and that no record corresponding to the name of the current member for Ottawa South was located. The ITO was very clear that the member for Ottawa South's computer was not accessed by the administrative right. Chair, it was a point that I thought, before we were finished, we should clear up.

Mr. Truax, what are the possible roles that can be assigned to a user of an MGS computer?

Mr. Shawn Truax: Roles in terms of privileges to access?

Mr. Bob Delaney: Yes. Exactly what are the roles that are possible?

Mr. Shawn Truax: There are many roles. I don't know that I could list all of them for you. The primary roles are regular user, to use the equipment; local administrative rights to your computer; and then global administrative rights to multiple computers. Those are three that I have knowledge of. I wouldn't know beyond that to list off—

Mr. Bob Delaney: Thank you. Are computers in satellite locations connected via a VPN?

Mr. Shawn Truax: It would depend on the location.

Mr. Bob Delaney: Would you be aware in the case of the location referenced in Ottawa?

Mr. Shawn Truax: No, I would not be aware of that.

Mr. Bob Delaney: That's fine. Chair, I think we are done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side, Ms. Thompson.

Ms. Lisa M. Thompson: Thank you very much. I really appreciate your testimony here today, Mr. Truax. You've brought to light some new information that falls within the mandate of our committee, specifically that hard drives were taken from 180 Elgin Street. We've come to realize, through your testimony, that that was the Premier's regional office where John Fraser worked and that the hard drives were taken after the by-election. We appreciate this, and we're going to continue to probe it.

I want to go back to the Dell tool in our final minutes. Again, I want to revisit the fact that it's the mandate of our committee to review the management and the deletion of any records that would pertain to the gas plant issue. With that said, you mentioned you went to school at Georgian College?

Mr. Shawn Truax: Wilfrid Laurier.

Ms. Lisa M. Thompson: Wilfrid Laurier, pardon me. Did you take any courses there that would point you to tools that could be used for the purpose of deletion of data?

Mr. Shawn Truax: Not during my university education. I focused on programming, electronics, things of that nature.

Ms. Lisa M. Thompson: So you didn't learn about those tools during your university education. That piques my curiosity. When did you learn about these tools or where, and what type of tools could be used?

Mr. Shawn Truax: Through my forensics work, those are things that we learn about as part of our training. There are many tools.

Ms. Lisa M. Thompson: Can you describe some of them?

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order.

Mr. Bob Delaney: On a point of order, Chair, I would like to suggest that if Ms. Thompson wishes to delve into the arcana and the minutiae—

Ms. Lisa M. Thompson: This is interesting to me.

Mr. Bob Delaney: —of means of playing games with computers, she may choose to do so outside here, but this line of questioning is way outside the committee's mandate.

Ms. Lisa M. Thompson: Absolutely not.

The Chair (Mr. Shafiq Qaadri): Just a moment, please. It's focusing on the qualifications of the witness in his role in cyber security, for which reason he's present. Please continue, Ms. Thompson.

Ms. Lisa M. Thompson: Again, I leave it to you, Mr. Truax. What type of tools, based on your experience, can be used for the deletion of data?

Mr. Shawn Truax: There are many. Do you want a list?

Ms. Lisa M. Thompson: Sure.

Mr. Shawn Truax: I don't think that I could even list off all of them.

Ms. Lisa M. Thompson: Could you provide it within a week, as well?

Mr. Shawn Truax: Sorry; there may be a misconception. There are many vendors that—

Mr. Bob Delaney: On a point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, a point of order.

Mr. Bob Delaney: There are probably millions of different tools that one can find. If Ms. Thompson wishes to make a specific allegation about whether a specific one has been used on a specific computer regarding specific data—but to just have this open-ended discussion over what—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. I'm not sure Ms. Thompson had graduated to the level of allegation just yet. I think it was just an information request.

Ms. Lisa M. Thompson: Yes.

The Chair (Mr. Shafiq Qaadri): Please continue, Ms. Thompson.

Ms. Lisa M. Thompson: Thank you very much. Well, I'll narrow it down, then. Let's talk specifically about Dell. What type of Dell tools could be used for the purposes of deletion, based on your experience?

Mr. Shawn Truax: I've never used any Dell tools to perform any tasks, so I would not have any knowledge of Dell software. We have industry-standard software that we use that's used by all forensics groups. Those products are tried, tested and stand up in court. Those are the products that we stick with. I would not, as a matter of course, go on the Internet and randomly download something just to use it in something that I may be investigating.

During my investigation—and I will have to be careful how far I go here. As part of an investigative process, I would look into tools that were used by somebody. I hesitate to stop there to say that that's what the OPP are doing specifically with the Dell tool. They're looking into its function, what it does and how it operates.

Ms. Lisa M. Thompson: Okay.

Mr. Shawn Truax: So I would not want to get too far there. I'd just be uncomfortable, because it's part of an investigative process and I don't want to speak to their investigative process.

Ms. Lisa M. Thompson: Okay. But kind of going along those lines, if we wanted to find more information out about the type of tool that could be used, based on what you just shared there, we technically could go online to Dell and find the type of tool that was used?

Mr. Shawn Truax: Yes, the URL that's listed in the ITO—

Ms. Lisa M. Thompson: Yes, it's here.

Mr. Shawn Truax: It's a publicly available website. You could go to that website and read about it to determine for yourself what it does. Does that answer your question?

Ms. Lisa M. Thompson: Yes. Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Milligan?

Mr. Rob E. Milligan: Yes. Thank you, Chair. I just have a couple of questions. Thanks for coming in today, by the way.

Mr. Shawn Truax: You're welcome.

Mr. Rob E. Milligan: Were you ever approached by Mr. Peter Wallace, Mr. David Nicholl, Mr. Steen Hume, Mr. William Bromm or Ms. Linda Jackson on the matter of extending special administrative access to Mr. David Livingston?

Mr. Shawn Truax: No.

Mr. Rob E. Milligan: No? Okay. All right. I have another question here. I'm not a computer person at all. You'll have to excuse my ignorance when it comes to this. It's my understanding that four of the 24 computers collected have shown dates and times of when those hard drives were accessed. Is that correct?

Mr. Shawn Truax: That is correct.

Mr. Rob E. Milligan: Okay. In your professional experience, how long would it take to retrieve such information as when those hard drives were accessed—the date and time that they were accessed? I'm imagining it would be quite complex to try to retrieve data from a wiped hard drive, but approximately how long would it take, in your professional opinion, to retrieve that data?

Mr. Shawn Truax: That specific information?

Mr. Rob E. Milligan: Yes.

Mr. Shawn Truax: During this review to answer the OPP's questions, we went to the event logs, which would be the first location. It's the easiest location and the quickest location to go to. That is referenced here. Once you go beyond the basic location, you do have to—I'm trying to figure how to explain it.

Mr. Rob E. Milligan: Yes. There are other sorts of departments or areas where that information would have been stored or something. Right?

Mr. Shawn Truax: It's stored on the hard drive on the computer, yes. As far as next steps, there are next steps. I feel uncomfortable releasing them. As to the time it would take, I wouldn't be able to comment on these specific hard drives, only because our team has not analyzed anything further than the three starting points. I

would not know what state the hard drives are in to provide a time for that. Does that—

Mr. Rob E. Milligan: Yes. I'm just—like, would it take a week, a month? I guess obviously it depends. Right?

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Mr. Shawn Truax: Yes. It depends. If it's okay, I could speak to my experience in other investigations. It does vary. Sometimes you go on a hard drive and it's very clear what activities have occurred. Sometimes you go on a hard drive and you do have to take a fair amount of time to piece together the steps. It is a technical process, but there are things to look at. I'd prefer to leave it at that because at that point we'd be discussing the actual investigative process.

Mr. Rob E. Milligan: Yes. So in your expertise of retrieving data from wiped hard drives—right?—that's what you do, in part. You sort of keep the records and stuff, but you have some training in forensic—obviously wiping hard drives or retrieving information from hard drives that have been wiped. Right?

Mr. Shawn Truax: I have training in wiping hard drives only because after we retain our records for the period of time required by us, because of the confidential nature of information that we do, we do need to make sure that those drives are wiped and that they are disposed of in a manner that has been set out for us.

Does that answer your question?

Mr. Rob E. Milligan: So if you had to retrieve data—and again, the severity of it would depend on the length of time it takes to retrieve that data, but when it comes to just time of access and the date, in your professional experience and training, how long would it take to retrieve that kind of information from the other 20 hard drives?

Mr. Shawn Truax: It would depend on the state that they're currently in.

Mr. Rob E. Milligan: Right. Okay.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Rob E. Milligan: Have you had any experience in retrieving data from wiped hard drives, outside of this—

Mr. Shawn Truax: Outside of this, yes. It is an investigative process tool that we would use to recover data to try to piece together a timeline of events that took place.

Mr. Rob E. Milligan: Okay. On other computers that you've tried to retrieve data from, how long would it take to retrieve data on, say, a severely wiped hard drive?

Mr. Shawn Truax: On a severely wiped hard drive—there are so many factors at play here, it's hard to nail down an exact time.

Mr. Rob E. Milligan: Yes. Just a rough estimate.

Mr. Shawn Truax: A typical investigation for us is three months from beginning to end. Depending on the findings, that could extend much, much further. We have done investigations that have taken a year.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Milligan, and thanks to you, Mr. Truax, for your presentation. You are officially dismissed.

COMMITTEE BUSINESS

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, we have a motion pending from previously.

Ms. Lisa MacLeod: I'll refer that to a subcommittee.

The Chair (Mr. Shafiq Qaadri): Thank you. So that is referred to a subcommittee.

Ms. Lisa MacLeod: But I do have another motion.

The Chair (Mr. Shafiq Qaadri): Yes, Ms. MacLeod.

Ms. Lisa MacLeod: Yay. Motions all around.

I move that the Standing Committee on Justice Policy meet for the purposes of hearing witness testimony on Wednesday, April 23, from 8:30 to 10:15 a.m., and 2 p.m. to 3:45 p.m., and Thursday, April 24, 9:30 a.m. to 11:15 a.m., and that witnesses be scheduled in accordance with the committee's existing witness procedure.

Hearing no objections, I'll see you next Wednesday.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. I'll just open the floor for comments.

I want to just flag this for your attention: As you know, it's a constituency week, so I'm not entirely sure of the—unlike our usual procedure, we don't have to actually break for question period at 10:15.

Ms. Lisa MacLeod: Hey, we can have three witnesses that day, then.

The Chair (Mr. Shafiq Qaadri): I guess part of the issue was, that four-hour break is likely unnecessary, because of no question period.

The other thing as well: We were wondering, if we are going to sit next week, if you wanted to rifle these all into a single day.

Ms. Lisa MacLeod: Sure. I'm happy to do that.

Interjection.

Ms. Lisa MacLeod: Oh, the break was because I have a speech on Wednesday.

The Chair (Mr. Shafiq Qaadri): Thank you. Fine.

Are there any further comments on this particular—Mr. Delaney?

Mr. Bob Delaney: Chair, I really don't see the point or purpose of this particular motion. This committee has now sat for more than 125 hours and has seen something in the neighbourhood of north of a third of a million documents. And indeed it was an NDP motion in September to have this committee moved to three witnesses a week. As well, we have all had five very long weeks, and we all, I'm sure, have very full schedules next week in our constituencies. Certainly I know that I do.

I would say that we've had plenty of time for fulsome debate. We continue to have plenty more time in the weeks to come. In fact, I can recall that we even moved some of the committee hearings after Mr. Fedeli at the time talked about missing the International Plowing Match.

As well, Chair, there are 10 committees sitting right now, including this committee. No caucus is having difficulties calling witnesses. I think we should just stay the course here, and we should, in fact, tend to those things that we need to attend to in our constituencies. No one has missed an opportunity to call a witness in this committee. Witnesses have shown up. I don't see the need for

this type of mind-changing on behalf of the opposition. In fact—

Mr. Peter Tabuns: Can we call the question, please?

The Chair (Mr. Shafiq Qaadri): When he's finished—

Mr. Bob Delaney: I would say just yesterday in the Standing Committee on General Government, after a long-fought battle to see report writing on auto insurance move forward, that the NDP teamed up with the PC Party to override their own motion and change entirely the business of that committee.

I think there's natural order here to committee business. We have all been here for quite some time. The three witnesses a week have worked out very well. Reverting to a brand new arrangement I know, in my case, is going to cause some major scheduling headaches. Indeed, under our existing timetable, we were often running into the confusion of whose witness slot was whose with what we used to have, which were three witness slots on Tuesday and two scheduled for Thursday.

Chair, there is no need for this. The government is not in favour of this motion and urges that it be defeated.

The Chair (Mr. Shafiq Qaadri): The floor goes to Mr. Singh, as well as Mr. Del Duca. I understand there's a potential request to mend this all into Thursday.

Interjections.

The Chair (Mr. Shafiq Qaadri): Mr. Singh first. Go ahead.

Mr. Jagmeet Singh: I was just going to suggest calling the question. We're prepared to support the motion. It's something that we are supportive of.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Del Duca and then Ms. Thompson.

Mr. Steven Del Duca: Ms. Thompson can go first if she likes.

The Chair (Mr. Shafiq Qaadri): Ms. Thompson.

Ms. Lisa M. Thompson: I was just asking if we could record this vote, please.

The Chair (Mr. Shafiq Qaadri): Recorded vote. Fair enough. Is there any further comments before—now, did you want this motion voted upon? Or you want to—

Ms. Lisa MacLeod: Yes. Actually, you know what? In looking at the schedule, and, understanding that we don't have to break for question period, we thought I could amend the motion to say that the Standing Committee on Justice Policy meet for the purpose of hearing witness testimony on Thursday, April 3, beginning at—

The Chair (Mr. Shafiq Qaadri): The 24th. The 3rd has gone. That would be 2015.

Ms. Lisa MacLeod: Thursday, April 24, beginning at 9:30, to hear three witnesses and that the witnesses be scheduled in accordance with the committee's existing witness procedure.

Of course, I would like a recorded vote on that.

The Chair (Mr. Shafiq Qaadri): All right, so the floor goes to Mr. Del Duca. But just to be clear, the motion has been re-crafted for Thursday, April 24 only, at 9:30 a.m., more or less all day—nutritional breaks will be provided—three witnesses.

Mr. Bob Delaney: Chair, are we debating the motion or the amendment?

The Chair (Mr. Shafiq Qaadri): Excellent question.

Mr. Steven Del Duca: Because I wanted to speak to the motion.

The Chair (Mr. Steven Del Duca): Fine. Mr. Del Duca, speak on the motion.

Interjection.

The Chair (Mr. Shafiq Qaadri): May I have unanimous consent for Mr. Del Duca to speak to the motion—to revert back, because we have a motion. But you're welcome to speak now on the amendment.

Mr. Steven Del Duca: No. With all due respect, Chair, I was actually in the queue to speak to the motion. After I gave the opportunity to Ms. Thompson to speak, Ms. MacLeod interjected and put forward the amendment. I'm not quite sure how that occurred, but that wasn't actually my understanding. So I—

The Chair (Mr. Shafiq Qaadri): Fair enough. May I ask again for unanimous consent for Mr. Del Duca to contribute?

Mr. Steven Del Duca:—don't think we need unanimous consent for me to speak to something that I was planning to speak to initially.

Interjections.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Del Duca, please go ahead.

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Mr. Steven Del Duca: Thank you very much, Mr. Chair. I want to take some time to echo, I think, the very well-thought-out, very articulate comments that were made a second ago by my colleague from Mississauga–Streetsville, which is a great riding, obviously, here in the GTA. As someone, particularly in his case, who has served with distinction on this committee since it was first formed to review the matters that we have now spent many, many months reviewing, I think that the member from Mississauga–Streetsville is actually quite right and his points are quite well taken with respect to the extent to which every member of this committee and each of the caucuses represented on this committee have done their very best over these last number of months to work very well together, to work very hard with respect to the specific mandate that we have: of course, the matter of reviewing the Speaker's finding of a prima facie case of privilege with respect to the production of documents by the ministry.

Ms. Lisa MacLeod: On a point of order.

Mr. Shafiq Qaadri: Ms. MacLeod, point of order. There's no timing here, but go ahead.

Ms. Lisa MacLeod: I would ask that the question now be put. This motion should be voted on.

The Chair (Mr. Shafiq Qaadri): He's still speaking, Ms. MacLeod. He has the floor.

Go ahead.

Mr. Steven Del Duca: Can I just clarify—okay, that's fine. As I was saying, the mandate that we have is to review the matter with respect to the Speaker's finding of a prima facie case of privilege with respect to the produc-

tion of documents by the Minister of Energy and the Ontario Power Authority to the Standing Committee on Estimates and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of both the Mississauga and the Oakville gas plants.

Interestingly, as I said a second ago, my colleague from Mississauga–Streetsville spoke at length just a moment ago about exactly how much work and effort and energy and resources have been conveyed and deployed with respect to making sure that this committee can do its work—

Ms. Lisa MacLeod: On a point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, a point of order.

Ms. Lisa MacLeod: There is a motion on the table. I respect that the Liberals don't want this to go to a vote, but I would ask you, as Chair—we've put forward a motion; we would like to vote on it—that the question now be put.

The Chair (Mr. Shafiq Qaadri): Your desires and the Chair's desires match, but Mr. Del Duca still has the floor.

Mr. Del Duca.

Mr. Steven Del Duca: Thanks, Mr. Chair. As I was saying a second ago, as my colleague from Mississauga–Streetsville explained before, I had the opportunity to provide my comments on this.

I think this committee and the people who are working on it, all members of every caucus, have done a great deal of very hard and extensive work over the last—well, more than a year now. We've heard from a very wide variety of witnesses. I think, as it was said earlier, this committee has now sat for over 125 hours and we have seen over a quarter of a million documents turned over. As we've heard at various points throughout the testimony provided to this committee, we have heard from outstanding individuals from the Ontario public service who have talked about the extent to which it took an enormous amount of effort to make sure that the document production requests that were put forward and approved by this committee were undertaken and how much of a strain, in many respects, it put on the public service. But to their credit, they've been able to provide this great number of documents, the tens of thousands of documents that have been provided. I think at various times we've had the opportunity to do—

Mr. Rob E. Milligan: Chair, point of order.

The Chair (Mr. Shafiq Qaadri): Point of order, Mr. Milligan.

Mr. Rob E. Milligan: If we could just get this on and just—

The Chair (Mr. Shafiq Qaadri): Pardon me?

Mr. Rob E. Milligan: —have the vote on the question.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Milligan. He has the floor.

Mr. Del Duca.

Mr. Steven Del Duca: Thanks very much, Mr. Chair. As I saying a second ago, this committee has now sat for over 125 hours. We have seen over a quarter of a million documents turned over. I know that the member from Mississauga–Streetsville also said in his comments earlier today that it was actually members of the NDP caucus that brought forward a motion—I believe it was on September 10—to see that this committee moved to three witnesses a week, something that was supported and has taken place.

I think that every member on all three sides of this particular committee, even though the exact lineup has changed and evolved over the course of time, has always brought the very best of intentions, wanting to work together to make sure that we can actually fulfill the responsibility or the mandate that was given to us by the Legislature, the mandate that I read out a second ago—a very important mandate, and actually one of the most fascinating things that I've had the chance to learn about, because I'm not really someone who came to this particular responsibility or this particular role with a great deal of extensive knowledge around the siting of energy infrastructure. I think one of the most fascinating, and ultimately one of the most worthwhile, undertakings by this committee has been the opportunity to ask a number of very intelligent, very thoughtful expert witnesses about their ideas with respect to how we can improve the future siting of energy infrastructure.

I think that's been a fascinating discussion, and I sincerely hope that as we continue to do our work, all members from all caucuses will keep an open mind with respect to how that aspect of the process, that notion of the future siting of energy infrastructure, is something that we can continue to focus on. That's very important, I know, for people in my community. I'm sure it's important for members whether you represent a community from the east or the north or the southwest or Mississauga or Ottawa–Orléans or Toronto–Danforth or any of the ridings across this province. I know that it's important to make sure that the future siting of energy infrastructure is something that we do in the most optimal way.

I think it's also important to recognize that since this committee began its work, the Premier of Ontario and the Minister of Energy have worked very hard to dramatically improve and enhance and strengthen a lot of the measures and a lot of the conditions and criteria that are required with respect to the siting of future energy infrastructure.

I would, in a way, just reiterate—because it's very important to me—that that aspect of this committee's mandate be something that we spend a degree of time and energy and care with respect to making sure that in our final report back to the House, we provide very clear recommendations on how we can take the improvements that have already been introduced into the system over these last number of months by Premier Wynne and Minister Bob Chiarelli and the government team and continue to enhance those.

As I was saying earlier, I think it is really important to note that the work that's taken place since—I forget the exact date that we started, Chair, but I believe it was in February 2013; at least that seems to ring a bell. I've had the chance, as has my colleague from Mississauga—Streetsville and some of the other members—we had the member from Nipissing, who served for quite some time on this committee; obviously, the member from Toronto—Danforth, I think, has joined us virtually since day one. There's been a bit of changeup from time to time. I, unfortunately, have not been able to attend every single committee hearing, but I've been proud to serve on this committee. I think that over this time, over these last number of months—12, 13, 14 months—sitting for over 125 hours and seeing the tens and tens of thousands of documents coming through, the number of witnesses that have come through is now trending towards—

Mr. Peter Tabuns: Point of order, Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, a point of order?

Mr. Peter Tabuns: The speaker—and I have great respect for him—is simply repeating himself endlessly. If he's going to raise a point, he should raise a point. If he's just going to repeat himself, I don't think that's allowable, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, I cannot make any comment on his cognitive state, but he does have the floor.

Interjections.

Mr. Steven Del Duca: Chair, as somebody who is a relatively new member to the Ontario Legislature, I aspire to one day be as eloquent and erudite as the member from Toronto—Danforth. I am a work in progress. As a very famous American politician once said, “God is not finished with me yet.” I would ask for a degree of indulgence as I continue to refine my oratorical skills here at committee, and hopefully beyond this point in time.

As I was saying—and I apologize, because it is important. It's important to make sure that we stress that there is an exceptional amount of work that's taken place here at this committee. We have heard from Premier Kathleen Wynne twice; we've heard from the former Premier twice; we have heard from a number of individuals representing a wide variety of careers, a wide variety of areas of expertise, and I think that—you know, I give credit. I give credit to every member who's served on this committee since the very beginning, because I believe we've all brought, for the most part—and there are always exceptions to every statement and sentiment—ourselves and our work and our attention to the task at hand, to the mandate that I referenced earlier in my comments. I think that we've done, for the most part, good work.

But from time to time, of course, as in any committee—and the other committees that I've served on are not necessarily immune to some of these similar activities happening—from time to time, people lose their cool. That happens. I understand the cut and thrust. At least, certainly I'm learning very quickly about the cut and thrust of committee hearings and debate in the

Legislature itself. But I think, by and large, people have done their best to try to get to the root of what it is they might be looking for.

1020

I said this earlier, in talking about the future siting of energy infrastructure, that I can think of a time long before I was elected to serve as a member of this Legislature, something I've been very proud to do for the last 19 months or so on behalf of the people of my community—I can remember that there was, at one point in time, a desire to site some energy infrastructure in my community. This was many years ago. There was actually a great deal of work undertaken by the city council of the time and residents from the area known as West Woodbridge in my community to make sure that it was clearly understood that this was something that wasn't particularly in keeping with the development plans and the sense of how that community wanted to evolve. That was perhaps many years ago, again, at which point I had the chance to see that level of citizen engagement, at that level, up close—

Ms. Lisa MacLeod: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Point of order, Ms. MacLeod.

Ms. Lisa MacLeod: Just on civic engagement, I think the best way to engage the public is for us to have a vote on this motion.

The Chair (Mr. Shafiq Qaadri): We appreciate your sentiments.

Mr. Del Duca, again, has the floor.

Mr. Steven Del Duca: Thank you, Chair. As I said earlier, I am always willing to listen closely and intently to the comments made by members of this Legislature who have served far longer than I, be it the member from Toronto—Danforth or the member from Nepean—Carleton. I do my best in putting partisanship aside from time to time. Although I am a fairly partisan individual, and I will admit to that, I am prepared from time to time to put my partisanship aside to learn, to witness and to give credit, I suppose, in all due respect, to those qualities that even members of the opposition bring to bear on behalf of their communities. I don't always agree with, I suppose, their style or their tactics. I certainly don't agree with the philosophical underpinnings, such that they are, that inform why they're doing the work they do, but I do try to keep an open mind about the work that members of the opposition do. I have respect for that, as I was—

Ms. Lisa MacLeod: Chair, a point of order.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, a point of order.

Ms. Lisa MacLeod: I move that the committee adjourn and that the question now be put.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod—

Interjection.

Mr. Bob Delaney: Chair, we have not yet had a chance to continue to speak to the amendment, let alone the motion. Mr. Del Duca still has some time remaining, I have some points I wish to make on the amendment, and Mr. McNeely hasn't spoken at all.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Your point is well taken.

Ms. MacLeod, your request for both a vote and the motion can occur when you have the floor, not through a point of order.

Ms. Lisa MacLeod: I'm really trying hard.

The Chair (Mr. Shafiq Qaadri): We appreciate your energy.

Mr. Del Duca.

Mr. Steven Del Duca: Thanks very much, Chair. I think that was a wise choice of words. After all, we are here in this committee—you mentioned the word “energy.” I think that’s important. As I’ve said earlier, as we do our work, as we’ve rolled up our sleeves from day one on this committee to work as hard as we can, I think the area that’s of most interest to the people who live across this province is to make sure that, as we go forward, as we continue to implement our own government’s long-term energy plan—and a long-term energy plan that I strongly encourage all members of the Legislature to take a moment to read. From this particular perch at this particular moment, I want to give a great deal of credit to the current Minister of Energy, Bob Chiarelli, and his outstanding team—his parliamentary assistant and all the others—who have done exceptional work with respect to putting together that plan. You mentioned the word “energy”; I think it’s really important that everybody take the time to review the long-term energy plan and take a look at the other initiatives and reforms that we have brought to bear with respect to that siting of future energy infrastructure.

I talked about civic engagement a second ago. It prompted the member from Nepean–Carleton to also provide some comments with respect to the importance of civic engagement. While I said earlier I think it’s important to recognize that we all come at this from different perspectives—I am a very proud Ontario Liberal; members opposite represent their philosophies and their parties, and that’s the importance of our system. That somewhat adversarial notion that’s at the foundation of our system is something that, in some ways, is very good and very strong. Sometimes it produces results that I’m sure viewers at home, people who we represent, don’t love to see, but it does bring out that healthy tension, and I think that’s important. That’s very much how we arrive at a point where we can produce the best result for the communities.

I was saying at length earlier—and I know the member from Mississauga–Streetsville was also saying—we have now sat in this committee for well over a year. We have had 125 hours of hearings. I’m sorry I’m forgetting the number, but I believe we’ve seen somewhere around 80—

Interjection.

Mr. Steven Del Duca: I was going to say 90. We are trending towards over 100 witnesses that have come through, Chair, including some witnesses who have appeared—

Mr. Rob E. Milligan: Eighty-eight.

Mr. Steven Del Duca: The member from Northumberland–Quinte West is mentioning 88. That sounds like a number. It reminds me of the jersey worn by Eric Lindros in all of his years while he played in the NHL, a great Ontarian as well.

I think that when you consider that the committee has now sat for 125 hours, that we have had literally tens of thousands of documents—every single document production request, to my knowledge, Chair, that has been put forward by members of this committee, regardless of which caucus they happen to represent, has actually been provided to the committee. They have had the opportunity to hear from witnesses. They have had the opportunity to hear from witnesses more than once, in some cases multiple times. I think the witnesses who have come through—I give them a great deal of credit for taking the time out of, in many cases, their very busy schedules to be here with us over the last 13, 14, 15 months, over these 125 hours. I think many of the witnesses who come forward in good faith have unfortunately been treated in a very shabby way by certain members of the opposition. Be that as it may, that’s obviously their right to represent members of their communities and their constituencies to the best of their respective abilities.

But given that we have spent so much time over these last 125 hours, given that we have spent so much time and energy and dedicated so much of our effort towards making sure that we are fulfilling the mandate provided to this committee by the Legislature itself, I think it is important that we take that notion of civic engagement that the member from Nepean–Carleton talked about just a moment ago, and that I tried to talk about as well, and we understand that the schedule next week for the Legislature, after five weeks of very intense work in the Legislature, is designed specifically to provide the 107 members of the Legislature with the opportunity to do exactly that: to engage with their communities, to take that notion of civic engagement and to do what we need to do to make sure that the voices and the concerns and the ideas and the passions and the aspirations of the people that we represent are brought back to this place in the week after the break week and that we can do the job we need to do.

It’s that very notion of civic engagement, which, by the way, is also one of those foundational principles that’s at the very heart of elements of the long-term energy plan and is part of the reforms that Minister Bob Chiarelli and his team have brought to bear under the direction and with the support of Premier Kathleen Wynne, to make sure that as we go forward into the months and years ahead, we site future energy infrastructure in a far more suitable and appropriate way.

It’s the very notion of a constituency week that provides all of us with that chance to hear directly from the women and men and their families and the employers in our respective communities—these are the people we represent. And so, after 125 hours of hearings, after 88 or so witnesses, after the tens of thousands of documents that have been provided to this committee, to then seek to

add several more hours of committee hearings during a week that is designed for us to make sure that we are hearing directly from the people we represent seems counterproductive to me from the standpoint of—as the opposition member from Nepean–Carleton said—the respect that she has for civic engagement. It seems to me that we should all be taking the time that we can over the course of that scheduled constituency break week to make sure that we are doing exactly what we are supposed to be doing as members of this Legislature representing the people in our communities.

I know that certainly in my own community, there are a number of things that are taking place next week, not only previously scheduled events, but certainly a great deal of work that needs to happen and a number of individuals who have wanted to come to talk to me, and because we are doing the work and we have done the work that we've done over the last five weeks in this place, they have not been able to see me, because in the limited time that I have on a Friday or perhaps even a Saturday in the course of a regularly scheduled week to see constituents, there's a good deal of overflow, let's call it, there's a good deal of people who have some very important issues to talk to me about. Next week is the opportunity for me to be able to sit down with them and hear directly.

Whether we're talking about challenges around developmental services or gridlock or transit or the future of the Vaughan hospital, these are matters that are extremely important to the people of my community. It would seem that if I really wanted to live up to the standard as espoused by the member from Nepean–Carleton with respect to the importance of civic engagement, we can't in this place just talk the talk, we have to walk to walk, and constituency week is the opportunity for us, all of us, regardless of partisan stripe, to do that kind of work—the work that really informs, in turn, the work that we do here in this Legislature when we speak about the matters that are important to the people that we represent. I just want to say that I think it's—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. Now, just to be clear, the motion for a two-day sitting is still before the floor, and the floor is open for comments on that motion. So those who would like to—

Mr. Phil McNeely: Chair.

1030

The Chair (Mr. Shafiq Qaadri): Just a moment. Gentlemen, ladies, would you care to say, because you have—

Interjection.

The Chair (Mr. Shafiq Qaadri): Mr. Milligan? I'm just interested in rotation, but I'm just telling you. Yes, go ahead.

Mr. Rob E. Milligan: Thank you very much, Chair. I sat here quite intently listening to the member from Vaughan, who I have a great admiration for. But at the same time, I'm fairly new here as well, and it's a great honour to be subbed into this committee now and again. I feel like a designated hitter or a pinch-hitter sometimes

coming in. But I'm also learning a lot, specifically here today, on procedure, protocol and what is transpiring here this morning. I think, to the member from Vaughan's point, he said that we've have 88 witnesses come before the committee to testify and give testimony on what actually has transpired with the gas plants investigation and what our given mandate is here.

But Mr. Chair, I have to say that we have learned, just this morning, some new information, that there's some new light that's been brought forward in this investigation. So I think, from the standpoint of the PC caucus, and I know the third party would probably agree with me, there have been testimonies that have just recently come to light that have given us a better understanding of what actually has happened in this fiasco, the gas plant fiasco under Premier Wynne and former Premier Mr. McGuinty.

I think it is our civic duty to sit on these committees, and this is why we have committees: to get to the bottom of issues, and this particular one happens to be the gas plant boondoggle. But on the whole, we do have a civic duty, and I'm proud to say that over the last two and a half years, I've really enjoyed serving the people of Northumberland–Quinte West. It's quite an honour, and when I go back to the riding, one of the things I hear when I'm out and about is—

Interjection.

Mr. Rob E. Milligan: Can I call the question, Mr. Speaker?

The Chair (Mr. Shafiq Qaadri): The question has been called. This is the commentary on the question. We're, by the way, voting the first motion of the two-day motion that's on the comment. I will rotate—Ms. Thompson, you're welcome to speak. But Mr. Singh, if you'd like to speak—no. So then—actually, I think this goes to Mr. McNeely, and then to Ms. Thompson.

Mr. Phil McNeely: Thank you, Chair. It's very important to me to be back in the riding next week. When you're not from the Metropolitan Toronto area, you have that special week when you set up all your meetings and you want to hear from the constituents in your riding. This is a sacred week, because you do get time with your people. You don't get much time if you're only going home on Thursday night and coming back on Sunday evening. So for that purpose, I think, from a legislator's point of view, from an MPP's point of view, that it's important to be back in the riding, and be back in the riding all week. It's not a matter of coming down for three or four hours. It's a matter of coming down and taking a whole day. You probably leave at 6 o'clock and get home around 8 or 9.

I really appreciate and enjoy what we've heard from so many people in this committee—some excellent, excellent professionals who have come out here and have defended the process of siting gas plants, who have looked at improving the siting of gas plants. I think it was extremely important. It was unfortunate that the OPA had a process that did not include that public consultation.

I think it's important that we had the people in Mississauga and Oakville that did give their concerns for

the environment, the concerns for the airshed that they're living in, and that it was so important that we get out of coal. They recognized this, and the new siting regulations that came out of here are probably a very important aspect of this.

We know that all three parties agreed that we shouldn't be building these plants—at a late stage, of course, in the process. The way we all agreed we were not going to build them, that we were going to, in one case, tear part of a site down, was a hard decision to make, but when you consider what people went through to get out of coal, the dollar cost to getting out of coal in Ontario—the first jurisdiction to get out of coal—it's extremely important that those issues came up during the siting of these plants. It's extremely important that the right decisions were made, and the dollar figure is one that all the parties should have considered at the time that we all came out and said that we were going to stop the gas plants.

In any case, the dollar figures are high, but in the long term, from a health perspective and from the perspective of the environment, these gas plants are going to enable us to get into other green energy. It's the proper way to go. It's the way a lot of this is going in the United States, now that coal is no longer the energy of choice. It's the energy of death from air quality and greenhouse gases. It's extremely important that we've acknowledged that now.

It's surprising to see that China is investing some \$50 billion into getting more of their energy from green sources. That's certainly something that's important. When we have experts coming in here and justifying—I know several of them—green energy and talking about the reductions in emissions, going from coal to gas, we know that the right decision was made. We know that it could have been done in a better way. All three parties participated in that decision. So I can go home to my riding and I can tell people: “Look, yes, there were mistakes made, but in the end, the decisions are the right decisions from the perspective of health and the environment.” As was said before, the long-term energy plan has been changed a great deal, and I think a good part of that is because of the perspective that was placed on energy production through a lot of these excellent people who have come in and given us of their knowledge and perspective.

I'm pleased to have the opportunity to sit on this committee. I haven't said very much, but I've certainly listened. I'm now working on a group of indicators of climate change, and certainly that's part of what we're doing. That's part of the direction we're going in Ontario for green energy. I'm pleased that we had the opportunity to have that big review of energy. We never had that review before, and certainly you get the best people coming in to give evidence and it certainly has taken us down the long way of understanding energy a lot better.

I was PA to the Minister of Energy back a few years, and even being the parliamentary assistant to the energy minister, it's a very difficult topic to understand. The

information coming in on it is from all directions, and everyone can take their own information on it. But if we look back at the testimony given at this—over, what, 100 witnesses, or close to 100 witnesses—we do see that there's a lot more information out there today. There's a lot more understanding of energy. There's still a long ways to go in understanding the direction we're going, but the long-term energy plan no longer includes a nuclear build, something that has taken a lot of dollars off the future energy costs.

We know that it was 22 gas production facilities for electricity that were located. Two of them gave great problems, but the system worked for most of them; I think it was about 18 or 19. We're going to pay the bill for that. That's true. But it's taking us into new areas. We understand distribution better. We understand that it costs money to transport gas to these locations. These were all issues that were not plain to us at the start of this and really complicated the methodology for costing them out. I think all parties, when they supported gas plants generally or supported the stopping of the two gas plants, had the opportunity to do their costing, but it was a very complex issue. It's taking many months to understand all the implications of those dollars.

We now know where we should be going. The long-term energy plan has benefited a great deal from the testimony heard at this committee. We've had an open discussion, people coming in and answering the tough questions about energy—not easy questions but the tough questions on energy. We've come a long way with the long-term energy plan because of the importance that has been placed on energy in Ontario.

The long-term impacts of how we're going to design our system have certainly changed a great deal. We no longer have that major nuclear build in our long-term energy plan. That has changed a great deal, and that's because of what we've heard here and the discussions that have come up. So even though the price tag on the relocations is high, in the long term, the implications for energy rates in Ontario should be positive, because we're no longer doing that major nuclear build. We're looking at all kinds of means of promoting more efficient energy use. The information that came out of these committees helped build that. It's made our decision-making so much better—not only the siting but the choice of which energies we're going to use in the future.

Interjection.

Mr. Phil McNeely: Pardon me?

Interjection.

Mr. Phil McNeely: I've finally, after many weeks of being at this committee, got an opportunity to get some of my ideas out about energy, so I thank the Chair for recognizing me. That is the end of my comments.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. McNeely. Ms. Thompson, the floor is yours.

Ms. Lisa M. Thompson: I'd just like to call the vote, please.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Thompson. Is that agreeable? Shall we call the vote? Fair

enough. So to be clear, we're now voting on the main motion, the two-day sitting. A recorded vote is requested. All those in favour?

Mr. Rob E. Milligan: Chair?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Rob E. Milligan: Can we have a five-minute recess?

The Chair (Mr. Shafiq Qaadri): A five-minute recess. Fair enough. Thank you.

The committee recessed from 1044 to 1049.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The committee is now back in session. All parties are now represented here.

Before the vote, just to be clear, we're on the main motion—a recorded vote for the two-day motion.

Ayes

MacLeod, Milligan, Singh, Thompson.

Nays

Delaney, Del Duca, McNeely.

The Chair (Mr. Shafiq Qaadri): The motion carries.

Ms. Lisa MacLeod: Thank you. Motion to adjourn.

The Chair (Mr. Shafiq Qaadri): Motion to adjourn. Any objections?

Mr. Bob Delaney: Chair, what is the purpose of this?

The Chair (Mr. Shafiq Qaadri): Pardon me?

Mr. Bob Delaney: What is the purpose of this motion?

The Chair (Mr. Shafiq Qaadri): What is the purpose of what? Sorry.

Mr. Bob Delaney: I believe there is a motion on the floor; I'm asking for the purpose of the motion.

The Chair (Mr. Shafiq Qaadri): The motion that was just voted on is carried. I'm just asking if there is any further business for the committee before we adjourn.

Mr. Bob Delaney: The reason I ask, Chair, is that a motion to adjourn is not debatable.

The Chair (Mr. Shafiq Qaadri): Yes. Excellent.

Is there any further business before this committee? Seeing none, we are adjourned until next week. Thank you.

The committee adjourned at 1051.

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Journal des débats (Hansard)

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Standing Committee on Justice Policy

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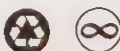
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 23 April 2014

Mercredi 23 avril 2014

The committee met at 1406 in room 151.

MEMBERS' PRIVILEGES

MR. TOM ADAMS

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, M. Tom Adams, who will be affirmed by our able Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth, and nothing but the truth?

Mr. Tom Adams: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Adams. Five minutes for your opening address begins now.

Mr. Tom Adams: Thank you, Mr. Chairman. Members, I'm an electricity consultant and researcher. I've been investigating and reporting on the gas scandal, including the work of this committee, for two and a half years. My findings, and all of your exhibits up until May 2013, are posted in searchable form on the Gas Busters section of tomadamsenergy.com.

The evidence before you represents an unprecedented record of the inner workings of a systemic failure. So that we might avoid such weakness in future, citizens must have access to your record. I urge you to ensure that your vast library of exhibits be placed online in a properly archived structure, with all content searchable. I have done my best, but Gas Busters is only current to a point. Making all original gas scandal documents accessible should be a taxpayer expense rather than a private one.

The Legislature, in its mandate, ordered you to report. I ask you to heed this wise direction. While the gas plant cancellation and relocation costs are small in the context of Ontario's soaring electricity bill, there is a scandal here that must be laid bare. Customers deserve answers to the questions contained in your mandate.

I submit to you that answers to the questions the Legislature passed to you can be summarized in the following 12 points.

An engineered cover-up centred around the offices—

The Chair (Mr. Shafiq Qaadri): Mr. Adams, just as you continue—time has stopped for a moment—I'm just looking at your 12 points. I'd just invite you to please use

parliamentary language. I think, as you can sort of discern on your own, there are a number of words here that are, I think, not appropriate before this committee, so I'd perhaps—I mean, you're welcome to go through your points, but you might want to restructure some of the words in there. Please continue.

Mr. Tom Adams: An engineered information management approach, centred around the offices of Premier McGuinty and Minister Bentley, was in place. This engineered information management approach included planned, coordinated avoidance of documentation; public business communication transacted on private networks; illegal email destruction and possibly cybercrime.

Mr. Bob Delaney: Chair, on a point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, a point of order.

Mr. Bob Delaney: I counted three unsubstantiated allegations in that second statement alone.

The Chair (Mr. Shafiq Qaadri): I believe your point is well taken.

I remind you, Mr. Adams, you are before a parliamentary committee, as you are very well aware.

Mr. Jagmeet Singh: Point of order.

The Chair (Mr. Shafiq Qaadri): Before I offer the floor to Mr. Singh, I'd just invite you to please, once again, respectfully contour your language to make it parliamentary.

Mr. Singh.

Mr. Jagmeet Singh: I just want to clarify a couple of points. Parliamentary language is a prescription that's applied to parliamentarians in the course of question period and in the course of comments made in the House. The testimony at committee should be unfettered. An individual comes before this committee for the purpose of seeking the truth, and they're able to adduce any evidence they wish to. There's absolutely no precedent set for fettering the speech of a witness.

The Chair (Mr. Shafiq Qaadri): I thank you, Mr. Singh. Parliamentary language is applied to parliamentary committees. I am not, by the way, ruling solely out of my own wisdom here; this is the collective opinion of our team on this side. These are unparliamentary, and therefore I have respectfully requested the witness to contour the language. I'm not interrupting him on going through these points, but I think, as Mr. Delaney pointed out in his point of order, which is accurate and well taken, that language is unparliamentary. Thank you.

Mr. Adams, your time resumes now.

Mr. Tom Adams: Experts advised that replacement generation for Lakeview's coal power be sited at Lakeview, but politics intervened.

Mr. Bob Delaney: There again, Chair, he has made an allegation that this committee has not found to be substantiated.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, I'm going to let that one go. I think there's a threshold of language that I'm being very cautious of. There's no objection there.

Please, Mr. Adams, continue.

Mr. Tom Adams: The energy ministry's 2005 decision to accept a lowball price from Eastern Power backfired. Cancelling the original contracts was all about electoral advantage but created a hole in the western GTA's power supply. The Ontario—

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Mr. Bob Delaney: There is an allegation there that is completely unsubstantiated. He has claimed that it has "created a hole in the western GTA's ... supply," an assertion made without any form of substantiation, and talked about something about electoral advantage, and I'm going to accuse him of exactly that.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Whether the hole is there, whether it's half full or half empty, is a matter of opinion.

Please continue, Mr. Adams.

Mr. Tom Adams: The Ontario Power Authority board of directors did nothing to protect ratepayers at the critical time. During the 2011 election, all parties made promises of some kind to cancel Greenfield South. Cancelling without relocating the plants may have cut the losses, but the Auditor General did not explore those.

Responsibility for the renegotiated contracts rests solely with the Liberal Party. Kicking off the negotiations with TransCanada, Mr. McGuinty's representatives, Jamison Steeve and Sean Mullin, gave TransCanada assurances that unjustifiably escalated cost, although only TransCanada knows by how much.

Relocation turned into a windfall for EIG when Robert Prichard, doing Minister Bentley's bidding, stung ratepayers for hush money.

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, thank you. Your point is well taken, even before verbalized.

Mr. Adams, I don't think that phrase in the last point there is appropriate. In any case, please continue.

Mr. Tom Adams: As the recontracting, the information management approach and the public statements drew complaint, the Premier and all the key ministers resigned en masse while trusted representatives pursued further information management approaches.

Mr. Bob Delaney: Chair, that is an allegation without any form of foundation and involves drawing—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney—

Interjections.

Mr. Bob Delaney: That involves drawing a conclusion that this committee is here to do.

Interjections.

The Chair (Mr. Shafiq Qaadri): Fine.

Ms. Lisa MacLeod: The Information and Privacy Commissioner actually drew that—

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I am on the alert for offensive language. It seems to have passed my test.

I will now return the floor. You have 25 seconds, Mr. Adams.

Mr. Tom Adams: Given this late hour, I urge you to pass the baton of sorting out the issues of document destruction to the OPP, the courts and the Information and Privacy Commissioner.

My pitch is, do not allow the gas scandal investigation to get waylaid again. You must report, even if only by interim report, no later than the earliest date the Legislature could be prorogued—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Adams. I must congratulate you on having perhaps the first and only contentious opening remarks.

In any case, the floor passes now to the PC side. Ms. MacLeod, you have your 20 minutes.

Ms. Lisa MacLeod: Thanks very much, Chair, and thank you very much, Mr. Adams, for coming in. I do apologize for the number of interruptions in your presentation. I thought it was quite thorough. I looked at your bullet points 1 through 12, and I encourage those at home, if they can, to access this information, which I hope will end up on your blog, where we are not confined by the constraints of parliamentary language.

I would like to talk to you about a freedom-of-information request that you filed in November 2012. You requested, as you know, all documentation and correspondence from the Premier's office related to the gas plant scandal. You were notified at the time—when I look at the documentation from your website, tomadamsenergy.com—that 100 pages of documents were responsive to the request, and you paid a deposit of just over \$100 to continue the FOI.

The day after Kathleen Wynne was sworn in as Premier, a letter was then sent to you, as Tom Adams, notifying you that you would be granted partial access to the request, and that would total 88 pages, down from 100.

On February 28, 2013, Kathleen Wynne then held a press conference, stating that she would be opening up government and would release all documents related to the gas plant scandal. She made this statement knowing that emails from senior Liberals had been deleted, because this FOI request proves that her office had to search for them.

On April 26, 2013, you received a decision of appeal on your appeal, notifying you that six senior Liberals had no responsive documents related to the gas plant scandal. The response states that during the search process and subsequent appeal, it was discovered that these emails had been deleted and that recovering them would be impossible.

I wanted to get you to talk about that freedom-of-information request, and then I would like to ask you to

talk about your submission on your website, tomadamsenergy.com, where you say, “Gas Busters Part 65: What Was Kathleen Wynne’s Role in Cover-up?” Could you do that for us? Could you walk us through?

Mr. Tom Adams: Okay. The origin of the FOI request came from a critique I had of the original estimates committee motion, which limited the investigation of documents to Ministry of Energy documents, Minister of Energy documents, and the OPA. I thought there were interesting questions elsewhere and tried to pursue that by FOI.

What transpired was a long exchange, and one of the key elements of that exchange is that an affidavit was filed by Jamie Forrest. She is a representative of the Premier’s office, and her responsibilities are to administer the processing of the paper to get the appropriate answers. Her affidavit identified a number of non-respondent individuals who could only reasonably have had carriage of documents of relevance to this committee’s work. That FOI went on for a very long period of time, and there was a lot of exchange back and forth.

Unfortunately, the resolution of that appeal was something that I believe I accidentally cut short in the administration of the documents. I’m not totally certain I made that mistake, but we actually never received a conclusion from the Information and Privacy Commissioner. So the record is, unfortunately, incomplete. I’m happy to come back to that, if I can be of more assistance, but it’s kind of a half-cooked hamburger.

The second element of your question—help me.

Interjection: Part 65.

Ms. Lisa MacLeod: I’ll start with the quote. It was March 31, 2014. You posted it at 1:10 p.m. This is what you said, and I’ll just read it to you:

“The very day Kathleen Wynne assumed legal authority as Premier of Ontario—Feb. 11—her office issued this response to one of my freedom-of-information requests.

“The FOI response—claiming that the only documents McGuinty’s office had during 2012 amounted to a handful of PR fluff—was effectively a declaration of systematic document destruction by McGuinty’s office.

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“At the time I [filed] this FOI, it was the only formal application to a complete record of the information in McGuinty’s office on the gas” plants “scandal. The estimate committee motion for disclosure that had been the focus of the justice policy committee hearings to that point had specified an earlier time period and had not specified McGuinty’s office.

“In the OPP warrant, Peter Wallace”—

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, time has stopped. I’d just also refresh the collective memory of the committee, to please use parliamentary language; the issue being that the witness, as you know, has been asked to configure his remarks in that respect, and for you to be, therefore, reading material of his that is offending to that—

Ms. Lisa MacLeod: Sure. I’m just reading something that—

The Chair (Mr. Shafiq Qaadri): Time resumes; go ahead.

Ms. Lisa MacLeod: Thank you.

“In the OPP warrant, Peter Wallace, the cabinet secretary during the transition period from McGuinty to Wynne, is noted as expressing concern about the necessity of maintaining documents to be able to respond to FOI applications.

“I am inclined to believe Kathleen Wynne when she claims that she had no oversight over document destruction.... The timing of the Premier’s office response to my FOI and the timing of David Livingston’s engagement of Peter Faist to destroy public documents as reported in the OPP warrant, suggests to me that Wynne’s negotiations with McGuinty on the transfer of power may have been a key period in the conspiracy that clearly guided the document destruction intended to conceal public business from the public.”

I just wanted some comment on that.

Mr. Tom Adams: The point that I was—

Mr. Bob Delaney: Point of order.

The Chair (Mr. Shafiq Qaadri): Point of order, Mr. Delaney.

Mr. Bob Delaney: An allegation of a conspiracy? Come on, Chair. I think we can get this down to proper parliamentary language that for more than a year we have more or less stayed within.

The Chair (Mr. Shafiq Qaadri): The point is well taken. I would once again ask all committee members to please observe that.

Mr. Adams and Ms. MacLeod, time resumes.

Mr. Tom Adams: When the ITO became available, it was clear that there was a coincidence of important dates. In the first week of February, Mr. Faist was retained to do certain work. Just days later, coincident with the first day on the job—formally speaking—of the current Premier, I received a freedom-of-information reply in the form of this affidavit from Jamie Forrest, which I was referring to previously. The response that was the subject of that exchange, giving rise to the affidavit of Ms. Forrest, clearly had a bearing on the work of this committee.

What appears to have happened, as best as I can put together the pieces, is that during the transition period, information management approaches were taken within the Premier’s office. That’s what I was trying to draw attention to.

Ms. Lisa MacLeod: Don’t you think, though, that for an FOI of this magnitude to have been conducted in the Premier’s office while Ms. Wynne was Premier, someone in her office had to have known that you were poking around for information, information that clearly had been removed? Would this not have been sent out through her office—some sort of red flag?

This isn’t the first freedom-of-information request you’ve put in to access government records, is it?

Mr. Tom Adams: I believe that there may have been two freedom-of-information requests before the Premier’s office at that time, mine being one.

It was very clear from the submissions received from the Premier's office in response, during the mediation part of the FOI appeal, that there was an intense level of investigation going on on their part to come up with responses to the inquiry.

Ms. Lisa MacLeod: Do you think some of the information that you had requested was deleted by Mr. Livingston or Mr. Faist or others?

Mr. Tom Adams: I would be speculating. But the timing of Mr. Faist's retention, and then the statements contained within the affidavit, are very troubling, I suggest.

Ms. Lisa MacLeod: Okay. Let's go back to March 29. You put another posting on tomadamsenergy.com.

You're a well-respected energy consultant in Ontario. You provide advice to all of us. Whether we take it or not is, much to your chagrin—

Mr. Tom Adams: Whether I'm respected or not is something to the opinion of others.

Ms. Lisa MacLeod: But this is your livelihood.

Mr. Tom Adams: Yes.

Ms. Lisa MacLeod: This is what you spend your time on.

Mr. Tom Adams: Yes, it is.

Ms. Lisa MacLeod: You write articles for the National Post.

Mr. Tom Adams: Yes.

Ms. Lisa MacLeod: You're sought after for your advice. So when you write on tomadamsenergy.com, it's not to be taken lightly; it's actually something that parliamentarians and their staff read.

On March 29, 2014, at 2:10 p.m., you posted an article, "Gas Busters Part 64: Cushy Gov't Jobs for Gas Scandal Cover-Uppers." This would have been March 29 of this year. You detail people, for example, like Neala Barton or Craig MacLennan and others who have fared quite well under the Wynne Liberal government. I'm wondering if you could go into detail on some of those folks who were involved in the initial gas plant scandal—possibly into the alleged cover-up of destroyed documents and emails and hard drives—and where some of these people have landed within the Liberal government of Ontario.

Mr. Tom Adams: I identified three individuals in that posting that you're referring to: Jamison Steeve, Craig MacLennan and Ms. Barton. Two of them show up on the sunshine list—Mr. Steeve and Mr. MacLennan—and Ms. Barton was identified in a newspaper article some time in the new year as taking a new position with the Pan Am Games.

What I was drawing attention to with that research was that these are all key players from the gas plant story. Ms. Barton was part of the affidavit of Jamie Forrest identifying no responsive documents to my FOI; of course, Mr. Steeve, of famous communication with TransCanada that's subject to some dispute about the content; Craig MacLennan, one of the clean inbox people.

What struck me as significant about that is that if there had been an attempt to really clean up this story about

what had happened with the gas plants, I would not expect to see individuals with this record still within the pay of the extended public service.

Ms. Lisa MacLeod: But they still—

The Chair (Mr. Shafiq Qaadri): Mr. Adams and Ms. MacLeod—again, time is stopped—once again, I respectfully ask you to please return to the mandate of the committee. As an example, subsequent employment of these individuals, given all of these events, is likely not really part of the mandate. But in any case, the floor is yours.

Mr. Tom Adams: I'm—

Ms. Lisa MacLeod: You're finished?

Mr. Tom Adams: Please.

Ms. Lisa MacLeod: Okay. We have indicated, in the official opposition, that we would like to call Beckie Codd-Downey and Lauren Ramey to our committee here. They are still government staffers who previously worked for the McGuinty administration; both are still working in the Wynne administration. You had indicated in a public venue, via social media, that they had been involved in this alleged cover-up. I'm wondering if you could outline your concerns to the committee.

Mr. Tom Adams: I take a harsh view of what has transpired here, and I've tried to outline my observations that I believe arise from the evidence. Many of these people have been called before the committee and have had their chance to speak to these matters; some have not. Actually, the two that you mentioned, I believe, have not yet appeared.

There's a lot of explaining that needs to be done here, it seems to me. There are strong allegations. There are harsh allegations. The question becomes, what benefit for public administration arises when individuals with these question marks hanging over them remain within the public employ?

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order.

Mr. Bob Delaney: I would like to bring up, I think, a very important point here that the witness needs to consider very carefully, which is that while members enjoy a wide latitude of privilege in what they can say, it would be worth noting to the witness that the witness does not enjoy that degree of privilege, and the witness—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Two things: (a) I'm sure he's edified by your remarks, and (b) he actually does enjoy those privileges when he's testifying before a parliamentary committee.

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But once again, for the benefit of committee members, the current line of inquiry, though interesting and certainly worthwhile etc., is not within the mandate of this committee. I would once again respectfully ask you to return to it.

Ms. MacLeod.

Ms. Lisa MacLeod: Just on a point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Yes, Ms. MacLeod. Generally, we don't point-of-order ourselves when we're speaking.

Ms. Lisa MacLeod: It's a return point of order to my colleague. The witness does enjoy the privileges that we enjoy. I don't think that it's this committee's mandate to muzzle our witnesses. That might be the *modus operandi* for opposition members by your government with lawsuits and the like. We have asked this witness to come here to testify based on publications on his website and information he has tried to obtain from that government during which their current Premier has been leader of their party and has been Premier of this province. The timeline coincides. I'm simply asking him questions based on that timeline, which I think is important information for the public to hear.

The Chair (Mr. Shafiq Qaadri): All that, Ms. MacLeod, is welcome and certainly material. But it needs to be within the mandate, and it needs to be parliamentary. Please resume.

Ms. Lisa MacLeod: Again, I wanted to talk a bit more about Beckie Codd-Downey and Lauren Ramey and the details which have emerged in your study. With your "Gas Busters," you are, I believe, up to part 65, perhaps even more. You've really documented this scandal quite well on tomadamsenergy.com. You have many followers across the province. This is public information.

You had indicated to me via social media that two individuals that we in the official opposition are intent on calling, Beckie Codd-Downey and Lauren Ramey, would be suitable witnesses for this. You had indicated that they may have had a role in this, and I am simply interested in learning more about that. I think the public is as well.

Mr. Tom Adams: I wear my heart on my sleeve. I publish what I think I can support. I do, from time to time, attract threats of litigation. None of those threats of litigation, fortunately, has ever been successful, although I have contested several.

But in this case, I have identified a number of witnesses that I would love to hear answers from. Those two are examples. There are others—for example, Mr. Robert Prichard—that I've identified as people who have had an interesting experience directly participating in these matters.

But I am concerned about the lateness of the date. The closeness of a potential election suggests to me that if the committee is to complete its work—more witnesses use up a lot of time, and you don't have time. Potentially, you may—

Ms. Lisa MacLeod: Who would you call? Who would you call if you were sitting in my chair? Who would be the top five people? You have spent an awful lot more time than any regular citizen has on this, and so I would go to you and say, "If you had five people that you could call next week, who are they?"

Mr. Bob Delaney: Chair, what does this have to do with the mandate of the committee?

Ms. Lisa MacLeod: It has everything to do with the mandate of the committee. It's recommendations for witnesses.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, I'm going to let the question stand.

Please go ahead.

Mr. Tom Adams: Mr. Robert Prichard played a key role in a moment when the negotiations with EIG were being concluded. That was a moment just prior to Minister Bentley's appearance before the estimates committee in July 2012. There was a lot of money spilled in great haste to close off the construction activity, and also, the evidence that I've seen suggests to me that Minister Bentley was looking for some talking points that he would offer to the estimates committee.

What we know from the record is that EIG was paid out at a rate of interest that translates into about two times the Criminal Code rate of interest. It's an extraordinary payout. They put \$60 million in, and they got \$149 million out. Really, why was it not government lawyers who were negotiating this? Why was it a lawyer who was brought in from outside to make that negotiation, and what were his instructions?

In this instance, Mr. Prichard was not acting in a legal capacity; he was acting in a business capacity. His claim on solicitor-client privilege seems to me, just as a non-lawyer, to be a question as to whether it was really—the fact that he is a solicitor is not something I'm contesting. It's whether he was doing solicitor work at the time that he was engaged in these negotiations. That's one that I have argued previously.

Ms. Codd-Downey, Ms. Ramey—actually, the entire list of all the people who were identified in the affidavit of Jamie Forrest—many of those have appeared as witnesses—not all—but it seems to me that they have all had interesting experiences of direct relevance to this committee's work.

Ms. Lisa MacLeod: Okay. I actually have the list here.

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Lisa MacLeod: Just finally, then, I'm going to ask you one final question. You identified back in 2012 that the true cost of the cancelled gas plants would be \$1.3 billion. Dalton McGuinty said it wasn't. You were right. You've been right all along. I believe you're right, right now, and I just wanted your comment on that.

Mr. Tom Adams: That wasn't my work alone. My friend Bruce Sharp, who was your second witness before this committee, has more technical knowledge in some aspects of this than I. We worked together; I published his stuff initially. He got a piece in the *National Post*; I got a piece in the *National Post*. There was a flurry in October and November of 2012.

When asked about our estimates and the \$1.3-billion claim that we were issuing, Mr. McGuinty's response was, "If Elvis says it, do you have to print it?"

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. To the NDP side: Mr. Tabuns, 20 minutes.

Mr. Peter Tabuns: Thank you very much, Mr. Chair. I don't have that many questions. Mr. Adams, thanks for being here today.

Mr. Tom Adams: Thank you.

Mr. Peter Tabuns: Just a few points. We filed freedom-of-information requests for documents related to Project Vapour, and were informed in roughly October or

November of 2012 that the documents we were requesting didn't exist.

You've done a lot of freedom-of-information work. Were you aware that we'd made those requests?

Mr. Tom Adams: Yes, I was.

Mr. Peter Tabuns: When you found difficulties with your freedom-of-information request, did you contact the Information and Privacy Commissioner?

Mr. Tom Adams: Yes, but my contact was by way of an appeal application that went to mediation. The mediation went on for a time. There was an exchange of documents, and then there was an adjudication process, and that's where I made my mistake.

Mr. Peter Tabuns: Okay. Have you been in a situation before as an energy consultant where you've filed for documents and seen this kind of process?

Mr. Tom Adams: I actually have not got extensive background in freedom of information and haven't done it in other jurisdictions, so I have a limited range of experience. I was really simply reading the documents for what they said, without a great deal of background.

Of course, information disclosure through this process has been one of the difficult challenges that the committee has faced. The one that really got me was the 88 pages back from the Premier's office, saying that this was all the documents they had. Keep in mind what was going on—of course you'll keep in mind what was going on at that time—

Mr. Peter Tabuns: I will, but I don't mind you saying it for the record.

Mr. Tom Adams: To me, what struck me as significant was that this was a period where he had direct carriage of the file. He had made promises that were responsible for relative electoral success in 2011.

This is an important issue. It's inconceivable that the Premier only had this small handful of press clippings.

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There were some material discoveries that arose from that material; for example, a letter from workers who worked at a firm affiliated with Greenfield South that drew, I think, some important attention to who we're really dealing with when we're dealing with Eastern Power. But that was a kind of accidental disclosure. It was caught up in a sweep.

What you have obtained in the May 2013 disclosure to this committee makes it very clear—and also the reports of the Information and Privacy Commissioner—that the responses to the FOI that I received were really not correct.

Mr. Peter Tabuns: Okay. And just out of curiosity, because I'm not familiar with this comment, when you say "who we're really dealing with" when we are dealing with EIG, are you talking about hedge funds located in Luxembourg and the Cayman—

Mr. Tom Adams: No, not EIG. Eastern Power.

Mr. Peter Tabuns: Oh, Eastern Power.

Mr. Tom Adams: Eastern Power had two power plants in Ontario. They were in a dispute with OEFC around the legacy of Ontario Hydro contracts, and what

we discovered in the 88 pages was this letter from workers who appeared to have been very unfairly treated.

Mr. Peter Tabuns: Last point. I don't know if you're aware, with regard to your point 7 and cancellation of Greenfield South, that when Andrea Horwath was asked during the 2011 election about the cancellation, her response was that she wouldn't make any commitment on this until she knew what sort of costs were going to be incurred.

Mr. Tom Adams: I struggled with this observation. There was some level of commitment from the local candidate, was my understanding, and I didn't want to attach too much strength to that. My thinking behind this point when I was composing this specifically with regard to the NDP's position was that there was some ambiguity. Perhaps my language here is not precise enough and better documentation would make the arguments different ways. In trying to compress things to under 200 words, I phrased it this way, but I'm very willing to hear the arguments on both sides.

Mr. Peter Tabuns: Okay. I don't have a further question, but would just note for the record that Andrea Horwath was speaking for the NDP when she was asked that question, and that was her position.

Mr. Tom Adams: Yes, and I'm well aware of that.

Mr. Peter Tabuns: Okay. I don't have further questions. Mr. Singh?

Mr. Jagmeet Singh: Thank you. Just with respect to your freedom-of-information requests, the documents that you obtained, was there anything in what you obtained—besides this interesting piece of information regarding Eastern Power, was there anything else of note or of significance in the information that you obtained or received?

Mr. Tom Adams: This was some while ago, but that's the only one that jumped out at me. It was the absence that was most noteworthy, not the content. Perhaps you can take me to a document, but I can't recall one of significance otherwise.

Mr. Jagmeet Singh: Sure. And then just in terms of that request, you made the request for—can you specify what the request was, just to understand why you felt that it was so underwhelming in terms of the response?

Mr. Tom Adams: Yes. Actually, there was a package of documents circulated, and it's drawn from my website. I can't recall; I think it's Gas Busters 23, but I'm not too sure.

So the FOI was published, and it was very comprehensive. My intention here was—

Mr. Jagmeet Singh: Sorry to interrupt you, sir. Are you referring to the last page of your package?

Mr. Tom Adams: That's right. The last page of the handout contains it. I can read it into the record if that assists you, but I don't want to use your time.

Mr. Jagmeet Singh: That's fine. So that outlines all the information that you requested. I see that there. Thank you for that.

You received a response which included 86 pages, you said?

Mr. Tom Adams: Yes.

Mr. Jagmeet Singh: Okay. Is there anything else that you'd like to add at this point in relation to the mandate of this committee regarding the gas plants cancellation cost and related matters?

Mr. Tom Adams: I've studied this for so long. It seems to be such an opportunity to see inside the machine as the machine turns. Right? I really think you have just an incredible opportunity. Ontario has a long history of parliamentary inquiries into matters related to electricity. There were select committees. There have been royal commissions—a host of them. Some of them really stand out historically. Many of them are concentrated during periods of minority government for reasons that this committee also kind of has a relationship to. Many of those committees did work of lasting value; you have that same opportunity. You can produce work of lasting value, but you need to report.

Mr. Jagmeet Singh: Okay. Do you have any questions?

Mr. Peter Tabuns: No.

Mr. Jagmeet Singh: Thank you. No further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh and Mr. Tabuns. To the government side: Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair. Chair, just before I begin, I would like to ask the committee for unanimous consent to screen a very brief video, that I think is germane, about the credibility of the witness.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Do we have unanimous consent?

Interjections.

The Chair (Mr. Shafiq Qaadri): I understand there is an objection. Mr. Delaney, the floor is yours.

Mr. Bob Delaney: Well, it appears they don't want to hear anything that is contrary to their preconceptions.

Chair, I would like to ask the Clerk to please distribute two documents to both the witness and to the committee.

The Chair (Mr. Shafiq Qaadri): That is your right. We will distribute it.

Mr. Bob Delaney: It seems, Chair, that it is in fact the PC Party with something to hide here. Mr. Adams, are you currently a member of the Ontario PC Party?

Mr. Tom Adams: Yes, I am.

Mr. Bob Delaney: Okay. Now, the photo that you're looking at was taken in February 2013. It's at a PC riding event. It shows you addressing a crowd of PC members in the riding of Scarborough Southwest. You're discussing the implications of the relocation of the Mississauga and Oakville plants. That was what was to be shown in the video. I'm sure you may remember this.

You said at the time, and I will use your words exactly: "When we turn to this Paths to Prosperity document, the Affordable Energy document, I'm very proud to have played a modest role in assisting in the drafting and the editing of that document. But there were many, many hands on the document." You go on talking in glowing terms about a PC Party document.

Mr. Adams, who had asked you to visit the riding and talk to the PC Party members that day?

Mr. Tom Adams: I received—

Ms. Lisa MacLeod: Point of order, Chair?

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, point of order.

Ms. Lisa MacLeod: As much as I would enjoy listening to the questions from Mr. Delaney, this really is not germane to the focus of this committee nor to the mandate of this committee, to talk about what happens at political fundraisers. Though I certainly would encourage Mr. Delaney to join us in the Ontario Progressive Conservative Party—I'm sure he would have a really good time listening to the facts and debate—

The Chair (Mr. Shafiq Qaadri): Thanks, Ms. MacLeod. I think I'm sure he will consider that invitation eagerly. The fact that the individual, your own witness, is an energy expert and is speaking on energy—not merely energy but actually on the relocation of gas plants—I think the question and the answers are material.

Mr. Delaney, continue.

Ms. Lisa MacLeod: Point of order, Chair?

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, point of order.

Ms. Lisa MacLeod: What he is asking is not at all related to the gas plants. What he was asking for is a document put forward by my former critic in the party, Vic Fedeli, on affordable energy, which is not germane, nor is it part of the mandate of this committee to talk about a document, a white paper at that, put forward by the party.

Mr. Bob Delaney: Chair—

The Chair (Mr. Shafiq Qaadri): All right. Thank you, Ms. MacLeod. I'm going to offer the floor to you, Mr. Delaney. May I just respectfully ask you to perhaps rephrase the question and bring it to the mandate? Please continue.

Mr. Bob Delaney: Well, Chair, if the witness wishes to quote himself, his website and his work, then I have the freedom to ask him questions about that very work that he's quoting in his responses to the PC Party.

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The Chair (Mr. Shafiq Qaadri): The floor is yours, Mr. Delaney.

Mr. Bob Delaney: Mr. Adams, who asked you to visit the riding and talk to the PC Party members that day?

Mr. Tom Adams: I think it was the secretary of the riding association, but I can't precisely recollect.

Mr. Bob Delaney: All right. Let's talk a little bit about the work that you've done for the Ontario PC Party when it comes to drafting their energy policies; for instance, the PC white paper on affordable energy.

Ms. Lisa MacLeod: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Point of order, Ms. MacLeod.

Ms. Lisa MacLeod: I appreciate that Mr. Delaney has an intense interest in the Progressive Conservative white paper on affordable energy. In fact, it's important that we

talk about affordable energy—but not here, because right here, this is what our mandate is—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. The expertise of the witness, his past affiliations, his contributions in the energy sector, be they in a blog or the National Post or to any particular party, are material.

Please continue, Mr. Delaney.

Mr. Bob Delaney: The question then stands.

Mr. Adams, you worked very closely with the PC Party in helping them generate their energy policies. For example, as far back as 2010, a PC news release will say, in part, “according to calculations performed by energy consultant Tom Adams.” PC MPP Jim Wilson said, in a news conference in February of last year, that he had relied upon you as an “energy expert.” The same year, party leader Tim Hudak said, “Tom has been a great source of advice for our policy, and he has been highly complimentary of our reliable and affordable energy plan.” Later during the year, Hudak quoted you as “Tom Adams, another respected energy expert.” And I’ve got a lot more.

How much did you help with the drafting of the PC white paper on energy?

Ms. Lisa MacLeod: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, point of order.

Ms. Lisa MacLeod: I was listening to all the wonderful quotes from my leader about Mr. Adams, and my colleague Mr. Delaney said he had a lot more. I’m wondering if he would expand on all of the generous quotes that Tim Hudak has said toward—

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, we appreciate your spirit of inquiry. That’s not really a point of order.

Mr. Delaney.

Mr. Bob Delaney: Nice try—but in the fullness of time.

How much did you help with the drafting of the PC white paper on energy?

Mr. Tom Adams: I’ve been a volunteer with the PC Party from time to time, over an extended period of time. I’ve had moments of falling out, such as during the 2011 election campaign, when I issued YouTube videos and Web postings attacking the positions that the party was taking at the time.

In the case of the Paths to Prosperity document, my role in its development arose in something of a restoration of my fortunes with my PC friends, who were generous enough to take me back into the fold after the harshness of my criticism in 2011. Historically, I have made life difficult for my friends on occasion.

Mr. Bob Delaney: Mr. Adams, what have they paid you for your professional expertise?

Mr. Tom Adams: Not a penny, sir.

Mr. Bob Delaney: Have you been remunerated for any expenses on any travel you may have had to undertake?

Mr. Tom Adams: No, but I have eaten some pizza that the PCs have paid for, sir.

Mr. Bob Delaney: You are, sir, quite welcome to enjoy pizza on any political party that so offers it to you.

What other work have you done in the energy field to help support the PC Party’s energy platform?

Mr. Tom Adams: None. Until 2011, much of my work was in Ontario. Since 2011, almost none of my commercial work has been done in Ontario.

Mr. Bob Delaney: How often does the Ontario PC Party engage you for your work as an energy consultant?

Mr. Tom Adams: Well, if we think of the term “engage” in a conventional, commercial sense, then of course not at all, since I’ve never received any compensation whatsoever. If we think of the term “engage” as a more fulsome notion of inviting comment or discussion, then the answer would be: with some frequency, a number of times per year.

Mr. Bob Delaney: So it would then be reasonable if someone called you a PC Party energy advocate?

Mr. Tom Adams: That—

Mr. Bob Delaney: As a card-carrying member, of course.

Mr. Tom Adams: That conclusion would be difficult to reach if the point of reference was my comments around the 2011 election platform, sir.

Mr. Bob Delaney: Let’s go into some of that, then. One of the posts on your blog is “Part 65: What Was Kathleen Wynne’s Role”—from March 31, 2014, this year. I’m just going to read you a little quote that you had written when it came to Premier Wynne’s involvement in the matters before this committee. You said, “I am inclined to believe Kathleen Wynne when she claims that she had no oversight over document destruction while Premier.” Can you confirm that you wrote that?

Mr. Tom Adams: Yes, absolutely.

Mr. Bob Delaney: Thank you. Your blog also indicates that you were aware that two OPP officers have testified before this committee. Correct?

Mr. Tom Adams: Yes.

Mr. Bob Delaney: All right. When Constable Duval was here, he confirmed that this investigation is “centred on the actions of Mr. David Livingston only”—April 3 of this year. Correct?

Ms. Lisa MacLeod: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, point of order.

Ms. Lisa MacLeod: It’s important for my colleague to remember that there is an OPP ITO, but that is not the sole focus of this committee. This committee has a mandate, prescribed by the Speaker and the finding of a prima facie case of privilege with respect to the production of documents by the Ministry of Energy and the Ontario Power Authority to the Standing Committee on Estimates, and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. We take your point under advisement.

First of all, the questions are material, so they will continue. But you do remind us that should questions venture into forbidden territory with reference to the OPP investigation etc., my team here will intervene. But the questions are material as currently being asked.

Mr. Delaney, continue.

Mr. Bob Delaney: Thank you very much. I think that having the OPP officers testify before the committee and say the investigation is into the former chief of staff of the former Premier is pretty credible. Wouldn't you?

Mr. Tom Adams: Absolutely. I followed the testimony carefully.

Mr. Bob Delaney: Let's talk a little bit about some of the Open Government initiatives implemented under Premier Wynne, on her watch. You are aware that in the last year, Premier Wynne's office coordinated a mandatory document retention training program for all political staff here at Queen's Park?

Mr. Tom Adams: Yes.

Mr. Bob Delaney: Okay. Premier Wynne has also undertaken a series of very significant steps to open up this process to an unprecedented degree and to be fully transparent on this particular issue around the cancellation and relocation of the two gas plants in particular, including:

- calling in the auditor to review the Mississauga and Oakville relocation costs and accepting the findings in her report unequivocally;

- recalling the Legislature right away and offering the opposition a select committee, which, by the way, they rejected;

- testifying at this committee twice, along with several other members of the current and former government; and

- providing about a third of a million documents in response to committee motions, including some 30,000 from Premier Wynne's own office.

You are familiar with all of those?

Mr. Tom Adams: Yes, I am.

Mr. Bob Delaney: Okay. I want to ask you a few questions about the FOI request you made and on which my colleagues asked you a few questions. I just want to clarify a few things. On your website, you noted that you had made an FOI request dated November 30, 2012, and that it was a specific request pertaining to the dates of January 1, 2012, to October 1, 2012. Correct?

Mr. Tom Adams: Yes.

Mr. Bob Delaney: That's important. I just want to make sure, because some of your comments and some of the questions asked of you were a little ambiguous. I want to make sure that everybody understands that this freedom-of-information request was made into records generated by the former Premier's office.

Mr. Tom Adams: Yes.

Mr. Bob Delaney: Thank you. On your website, you stated that records were located and sent to you with a letter dated February 11, 2013. Right?

Mr. Tom Adams: Yes.

Mr. Bob Delaney: That was the last day that Premier McGuinty held office.

Mr. Tom Adams: Yes.

Mr. Bob Delaney: All right. In response to your appeal, the current Premier's office advised that a further search had been undertaken for responsive records under a separate request. In this search, the Premier's office identified records prepared by the government House leader's office relating to the conduct of matters within the Legislature. While usually these records are considered outside the scope of the freedom-of-information and privacy act legislation, in the interests of transparency, these records were shared with you. Correct?

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Mr. Tom Adams: You referred to it as a separate search; I think it's a related search. But I think I understand your point.

Mr. Bob Delaney: I'll take your distinction on that.

From a letter dated April 26 that you posted on your website: "In a further search for records, we identified records that were prepared by the government House leader's office relating to the conduct of matters within the Legislature. While these records are normally considered outside of the scope of the Freedom of Information and Protection of Privacy Act, in the interest of transparency, the government made a decision to voluntarily release these records." Those are your words.

Mr. Tom Adams: I don't believe those are my words. I believe I was quoting.

Mr. Bob Delaney: Okay. Nonetheless, you have posted that on your website.

Mr. Tom Adams: Oh, yes. Absolutely. I acknowledge it.

Mr. Bob Delaney: So, in May 2013, a motion was passed at the Standing Committee on Justice Policy for another series of documents related to the two gas plants, and in response, Premier Wynne's chief of staff, Tom Teahen, sent a letter to the committee including the search parameters, the corresponding responsive records, and explicitly added that though the government House leader's office would not formally be subject to a search of this kind, the records from this office had been included in the document production in the interests of transparency.

In fact, a list of 52 names that the information technology office had identified as being formerly employed were also turned over to the committee, the Standing Committee on Justice Policy—this one.

At the time, the Premier's office undertook to ensure that best efforts to fully comply with the committee's request had been made and some 30,000 pages of responsive documents had been available for this request, to the committee, and also to you. Will you confirm that?

Mr. Tom Adams: Your question identified search requests pursuant to certain code names. My request did not contain any code names, but other than that, I concur.

Mr. Bob Delaney: Thank you. In addition to the search undertaken by the Premier's office, searches were also conducted by Cabinet Office, which has produced to the committee records sent to or received from staff in the Premier's office. Similarly, searches in the Ministry

of Finance, the Ministry of Energy and the Ontario Power Authority may have also produced records sent to or received by staff in the Premier's office, and we understand that records sent to or received by staff have been made available to you through the office of the Clerk of the Committee. Correct?

Mr. Tom Adams: I believe what you're referring to is the document disclosure in and around May 2013 that constitutes a document collection that runs some 31 gigabytes. That material I do have. I have spent some time searching it; it's very awkward to search. I have not had the resources to publish that material—

Mr. Bob Delaney: The records, nonetheless, remain accessible to you.

Mr. Tom Adams: I have those records. That's correct.

Mr. Bob Delaney: Thank you. The Ministry of Government Services also conducted a centralized electronic search of the available email accounts and personal drives of certain named individuals, formerly or currently employed in the Premier's office, in response to the committee's motion. They include the current Premier, Kathleen Wynne; the former Premier, Dalton McGuinty; David Livingston; Chris Morley; and some former senior staff in Premier McGuinty's office, including Laura Miller, Sean Mullin, Jamison Steeve, John Brodhead, Dave Gene and John Fraser.

Will you also please confirm that these records have been made accessible to you through the Clerk of the Committee?

Mr. Tom Adams: I have the records that the committee has—

Mr. Bob Delaney: Thank you. That's the question I was asking you: that you do, in fact, have the records that the committee has.

Mr. Tom Adams: I have the records that the committee has.

Mr. Bob Delaney: Thank you. So, in November 2013, after receiving this material, which we both agree runs to tens of thousands of pages, you did then end your appeal. Correct?

Mr. Tom Adams: I believe the appeal lapsed in December 2013.

Mr. Bob Delaney: So, in essence, the appeal is now over—finished.

Mr. Tom Adams: That's correct.

Mr. Bob Delaney: Thank you. The current Premier introduced a series of new rules governing document retention and record-keeping practices of political staff. Are you aware of those?

Mr. Tom Adams: Yes.

Mr. Bob Delaney: Okay. To provide a little bit more context, then: The current Premier has, in fact, apologized about the former administration not turning over all the documents requested, and has since been fully co-operative with the Information and Privacy Commissioner on a number of things.

When the Information and Privacy Commissioner released her report this past summer on document retention

practices by the government, it was an item the Premier moved very quickly to lead the way on. The Premier gave directions to all political staff on the need to be responsible and diligent in retaining documents pertaining to government business, and ensured that new training processes were put in place.

Following that, the Information and Privacy Commissioner was quoted as saying—among other things about the Premier—that the Premier “has been fully co-operative with me and my office. In fairness to Premier Wynne, she said, ‘You have my full co-operation, whatever you want from us.’”

She also said in an interview with the Toronto Sun, “I have commended Premier Kathleen Wynne's government's approach to dealing with this issue, referencing the staff training program she instituted and the memo circulated by her chief of staff.”

Are you aware that Dr. Cavoukian had made these statements?

Mr. Tom Adams: Yes, I'm aware.

Mr. Bob Delaney: Okay. So the government, then—actually, I'm going to skip a few more of Dr. Cavoukian's statements.

With regard to the Auditor General, the Auditor General said, “I did have the opportunity to meet with the Premier”—referring to Premier Wynne. “It was good to hear that they are taking the report seriously and they are taking some actions and changing the way things are going to be done in the future so that a situation like this doesn't evolve.”

This was a statement made by the Auditor General on October 8 of last year, 2013. Were you aware of the Auditor General's statement?

Mr. Tom Adams: Yes, I am.

Mr. Bob Delaney: Thank you. To go back to the 2011 provincial election, I presume you paid fairly close attention to the issues during the election?

Mr. Tom Adams: Yes.

Mr. Bob Delaney: Did you participate in helping the PC Party campaign at all?

Mr. Tom Adams: No, I did not.

Mr. Bob Delaney: Okay. But you would be familiar with the PC promise to cancel the Mississauga power plant if it were elected. Correct?

Ms. Lisa MacLeod: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Point of order, Ms. MacLeod.

Ms. Lisa MacLeod: Point 9 of Mr. Tom Adams's presentation to the committee says, “Responsibility for renegotiated contracts rests solely with the Liberals.” I just wanted to point that out.

The Chair (Mr. Shafiq Qaadri): We thank you for that reminder. It's not a point of order. The question is material.

Mr. Delaney, please continue.

Mr. Bob Delaney: So you would be, then, familiar with the PC promise to cancel the Mississauga—

Mr. Tom Adams: Yes, I am.

Mr. Bob Delaney: Okay. The fact is, of course, that a leader doesn't just make a promise to cancel the Missis-

sauga power plant—which was a PC Party commitment that was an integral part of their political strategy. As a PC Party member, why would you—

Ms. Lisa MacLeod: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod on a point of order.

Ms. Lisa MacLeod: I'd just like to remind my colleague opposite that the Ontario PC Party is not under an OPP investigation, but it is members of his party who are—

The Chair (Mr. Shafiq Qaadri): These excellent points of order and floating reminders are most interesting, but are, generally speaking, not points of order.

Mr. Delaney, continue.

Mr. Bob Delaney: Thank you, Chair. I would remind my colleagues and perhaps bring to the attention of the witness a document from the 2011 campaign, which I passed out. If you will look at the highlighted section, Mr. Adams, it reads, “The only party that will stop the Sherway power plant is the Ontario PC Party.”

Mr. Tom Adams: Yes, I'm aware of that.

Mr. Bob Delaney: Do you recall the name of the candidate who ran in the riding of Mississauga South, in the 2011 election, for the PC Party?

Mr. Tom Adams: I can't be trusted with the pronunciation, but—

Mr. Bob Delaney: Could you try?

Mr. Tom Adams: Janoscik?

Mr. Bob Delaney: Geoff Janoscik? Would that be about right?

Mr. Tom Adams: Janoscik, yes.

Mr. Bob Delaney: Thank you. In that package—which, by the way, was distributed as a PC document—we've printed the script of the PC robocall from PC candidate Janoscik that was blasted out to Mississauga homes. He says, in part, “I'm against this power plant, and as your MPP, I will fight to stop the power plant from being built...”

1510

So my last question for you, Mr. Adams: What work did you do to help the PC Party cost their promise to cancel these two power plants?

Mr. Tom Adams: I did no such work. I would point to a distinction between the cost of cancellation versus the cost of relocating, which I think is material—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. It passes now to the PC side. Welcome, Ms. Martow, for your inaugural questions to the justice policy committee. You may begin.

Mrs. Gila Martow: My inaugural question to this committee, that is. I just want to say that I really compliment Tom Adams, and I'm sorry for the kind of badgering questions he had to endure. He's a private citizen. He has spent a lot of his own time and his own funds to do what really is up to the government to be doing, which is to investigate themselves. I really commend him for that. Thank you very much.

Mr. Adams, you mentioned previously Jamie Forrest, who administers the freedom of information at the Pre-

mier's office. I guess that is who you were dealing with. I just want to read out, so it's on the record, a list of names of individuals who had office email accounts in the former Premier's office. They were listed in Jamie Forrest's affidavit. I'm going to apologize for any mispronunciations of any of the names: Chike Agbasi, Christine Allenby, Kristyn Annis, Asma Bala, Richelle Barrette, Neala Barton, Jennifer Beckermann, John Brodhead, Tyler Charlebois, Beth Clarkson, Beckie Codd-Downey, Julie Cousins, Pierina DeCarolus, Jonathan Espie, Patricia Favre, Samantha Fowler, John Fraser, Alexandra Gair, Dave Gene, Mark Hazelden, Sophia Ikura, Kate Jamieson, Emily Jephcott, Keerthana Kamalavasan, Shawn Kerr, Nauman Khan, Leon Korbee, Jason Lagerquist, Kristen Lake, Ruby Latif, Kayla Lewis, David Livingston, Rod MacDonald, Lindsay Maskell, Wendy McCann, John McGrath, David McLaughlin, Laura Miller, Sean O'Connor, Paulina O'Neill, David Oraziotti, Cortney Pasternak, David Phillips, Lauren Ramey, Elise Roiron, Jonathan Rose, Michael Simpson, Tracey Sobers, Kevin Spafford, Jessica Spindler, Priya Suagh and Paul Tye—just so that their names are now on the record, people of interest to this committee. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. Your time is done. All right, thank you—

Ms. Lisa M. Thompson: No, no, me.

The Chair (Mr. Shafiq Qaadri): Ms. Thompson.

Ms. Lisa M. Thompson: Thank you very much. Now, Mr. Adams, when my colleague was reading off the names, I heard “John Fraser.” To your knowledge, was he the John Fraser who worked at 180 Elgin Street in Ottawa and who is now MPP for Ottawa South?

Mr. Tom Adams: That's my understanding.

Ms. Lisa M. Thompson: Okay. Interesting, based on what we learned last week.

But changing gears here just a notch, I want to go back to some of your opening remarks, specifically number 10, where you note, “Kicking off the renegotiation with TransCanada, McGuinty's representatives Steeve and Mullin gave TransCanada assurances that unjustifiably escalated costs, although only TransCanada knows by how much.”

In your estimation, who in TransCanada would specifically know what the escalated costs would be?

Mr. Tom Adams: TransCanada is an extremely sophisticated player. They have demonstrated a lot of ability to figure things out that other people haven't understood. This is a company that has very good gas models, for example.

The gas cost element of the gas management fee settlement is an example where there was a tremendous amount of money on the table, as identified in the Auditor General's report. There would have been a negotiating team that would have collected the information from that meeting, but the analysis would have been done by analytical teams elsewhere.

Ms. Lisa M. Thompson: So to circle back around, that's why you feel Richard Prichard would—

Mr. Tom Adams: Robert Prichard—

Ms. Lisa M. Thompson: Robert Prichard. Excuse me.

Mr. Tom Adams: —was not involved in the Trans-Canada negotiation. The importance I associate with his role in matters of relevance to the committee relates specifically to the EIG element of the Eastern Power negotiation.

Ms. Lisa M. Thompson: Thank you for clarifying that.

Going on to your 12th point: “As the recontracting, cover-up and web of statements drew complaint, the Premier and all key ministers resigned en masse while trusted representatives destroyed records and frustrated FOIs.” Can you elaborate on that?

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order.

Mr. Bob Delaney: Chair, if it was unparliamentary enough for you to direct the witness to change the words while reading it, it should remain unparliamentary enough for Ms. Thompson quoting those words.

The Chair (Mr. Shafiq Qaadri): The point is well taken and agreed to. Ms. Thompson, I’d appreciate if you’d please resume parliamentary language. Thank you.

Ms. Lisa M. Thompson: Okay. Mr. Adams, could you please elaborate on your 12th point in your opening remarks?

Mr. Tom Adams: The point that I’m trying to make: Especially the last two clauses of the sentence try to combine what we learned in the ITO with what we learned during the disclosure process around the documents, including the FOIs. The same people are showing up in both venues. Right? So the role of Mr. Livingston in this time period, as we’ve seen in the report of the Information and Privacy Commissioner, then in the ITO and then on these lists, including the affidavit of Jamie Forrest—I’m just trying to connect the dots between these different threads of information that are available to you.

There is an allegation around what may be legally contested behaviour. He has also identified Mr. Livingston on a list of people who have declared not to have responsive documents from a time period when he was directly engaged.

Ms. Lisa M. Thompson: Okay, and I want to talk about that a little bit more. Thank you for bringing that up.

I’d like to go back to this justice committee on August 6, where the nature of your FOI requests was discussed between Laura Miller and Vic Fedeli. Specifically, I want to go to a particular moment during that testimony and pick up some comments. Okay? Then I’ll follow up with you after that.

I want to start off with Mr. Victor Fedeli saying to Laura Miller, “I think you lied to these people.” Ms. Laura Miller then says, “—that I am under oath.” Then Mr. Victor Fedeli says, “Then, under oath, tell me, did you have responsive documents to either of these two FOI requests? Yes or no.” Ms. Laura Miller then goes on

to say, “At the time I did the research, no.” Then as the conversation evolved during that particular testimony, Mr. Victor Fedeli went on to say, “The lesson learned is, you thought you deleted your emails permanently and they weren’t deleted permanently. Only when the Ministry of Government Services looked ‘under the hood’ did they find your emails that you thought were safely deleted. Is that true?” Ms. Laura Miller responded, “I’m glad that they found them.” Then Mr. Victor Fedeli said, “I’m glad they found them, too, because you told the freedom-of-information request you had no responsive records.”

So as a citizen submitting FOI requests and paying out of your own pocket, how do you feel when you hear that type of testimony?

Mr. Tom Adams: I was quite moved by the final passage of the report of the Information and Privacy Commissioner, where she was quoting another authority who was saying, in effect, that you can’t have a democracy if the business of the people is none of the people’s business.

That passage by Miller, keep in mind—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Tom Adams: —in your May 2013 document inventory, I think you can look there and find not just emails but documents of her authorship.

1520

Ms. Lisa M. Thompson: Okay, yes. Thank you very much. My last question for you is, do you suspect that there are any more cases like this where emails have been deleted in order to avoid FOIs?

Mr. Tom Adams: A proper answer to that question requires a reconstruction of the archive. I’ve proposed, in my remarks, a chronological series. The information that has been disclosed to this committee—I used a term that I may not be allowed to use here in describing the nature of that disclosure. In my professional—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Thompson. The floor passes now to the NDP. Mr. Tabuns.

Mr. Peter Tabuns: We have no questions. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. The floor passes now to the Liberal side. Mr. Delaney.

Mr. Bob Delaney: Mr. Adams, the committee staff did a pretty good, thorough job in looking up your background. Just a couple of clarification questions: Have you ever worked for an entity that generates electric power?

Mr. Tom Adams: I was on the board of directors of the predecessor of the IESO, but they do not generate power.

Mr. Bob Delaney: Have you ever worked for an entity that is involved in the transmission of electric power?

Mr. Tom Adams: The closest I’ve come to professional engagement is with the IESO’s predecessor.

Mr. Bob Delaney: While you have good academic qualifications, have you ever practised science or engineering in the electric power field?

Mrs. Gila Martow: Point of order.

The Chair (Mr. Shafiq Qaadri): Point of order, Ms. Martow.

Mrs. Gila Martow: It's my understanding that this committee is about the deleted emails and the lack of transparency in terms of the cancellation of the gas plants. We're not having a committee meeting to discuss and review the qualifications of somebody—

Mr. Bob Delaney: Chair, I have asked other witnesses similar questions.

The Chair (Mr. Shafiq Qaadri): Ms. Martow, with respect, (a) the committee is not about the deleted emails exclusively and (b) the background of witnesses is material.

Mr. Delaney, the floor is yours.

Mr. Bob Delaney: The question stands.

Mr. Tom Adams: I've testified many times before regulatory tribunals and been accepted as an expert witness on many occasions. I've also testified before—

Mr. Bob Delaney: I understand that you have been accepted as a knowledgeable witness, but the question was, have you worked in a laboratory, a production facility or an entity that is involved in the transmission of electric power?

Mr. Tom Adams: Not transmission of electric power, no.

Mr. Bob Delaney: Or of the manufacture of major components that are used in the production or transmission of electric power?

Mr. Tom Adams: No.

Mr. Bob Delaney: Just to go back to the quote that you posted on your blog where you said, "I am inclined to believe Kathleen Wynne when she claims that she had no oversight over document destruction while Premier," which you earlier confirmed that you had written—and that, in fact, you are a card-carrying member of the PC Party, as is your freedom. You also confirmed that you frequently engage with the PC Party and their energy policies, as you said, a few times a year. As a trusted adviser to the Ontario PC Party, would you in your capacity advise the PC Party of Ontario to continue with the allegations that they have made against Premier Wynne?

Mr. Tom Adams: I'll leave it for others to decide whether I'm trusted or not. The allegations that you're discussing are part of a political exchange, and—

Mr. Bob Delaney: It's actually a yes or a no question.

Mr. Tom Adams: I would hesitate to advise anyone on a political matter such as that.

Mr. Bob Delaney: Okay. Chair, thank you very much. We are, in fact, finished.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. I thank all members of the committee for their indulgence. I realize there's a lot of to and fro with reference to mandate and what is in and out of order and parliamentary language etc.

There is a motion before the committee. Mr. Tabuns, is this yours?

Mr. Peter Tabuns: No, it is not my motion.

The Chair (Mr. Shafiq Qaadri): Whose motion is this? Oh, I'm sorry. Ms. Thompson, go ahead.

Ms. Lisa M. Thompson: This is a motion to sit next week. I move that the Standing Committee on Justice Policy meet for the purposes of hearing witness testimony sit on Monday, April 28, 2014, from 8:30 a.m. to 10:15 a.m. and from 2 p.m. until 6 p.m.; and Tuesday, April 29, 2014, from 8:30 a.m. to 10:15 a.m. and from 2 p.m. to 6 p.m.; and Wednesday, April 30, 2014, from 8:30 a.m. to 10:15 a.m. and from 2 p.m. to 6 p.m.; and

That three witnesses be scheduled per day in the following manner: PC witness from 8:30 a.m. to 10:15 a.m.; NDP witness from 2 p.m. to 3:45 p.m.; and Liberal witness from 4 p.m. to 5:45 p.m.; and

That a witness list with up to 10 names must be submitted to the Clerk no later than end of day on Thursday, April 24, 2014; and

That the committee return to its current organization for meetings that occur beyond April 30, 2014.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Thompson.

You're welcome to make some comments. I would offer the floor to Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, we're interested in the motion, but we actually have to confer with our colleagues. We'd like to ask for a 15-minute recess.

The Chair (Mr. Shafiq Qaadri): A 15-minute recess is available—fair enough. Fifteen minutes: Let's keep to that schedule.

The committee recessed from 1526 to 1534.

The Chair (Mr. Shafiq Qaadri): Thanks, colleagues. The committee is now back in session. We have the motion, as read by Ms. Thompson, before the floor. The floor is open for comments. Mr. Tabuns—or anyone. Any comments?

Mr. Jagmeet Singh: We have some matters to discuss after this motion.

Mr. Peter Tabuns: Yes.

The Chair (Mr. Shafiq Qaadri): Fair enough. Are there any further comments on this particular—Mr. Delaney.

Mr. Bob Delaney: Well, Chair, I don't find that this is a reasonable request at all. I would urge the members opposite to reconsider their position on having more committee hearings. I would remind everyone that we have now sat for more than 125 hours. We have seen some one third of a million documents.

It was, in fact, our colleagues in the NDP who brought forward a motion on September 10 to see that this committee moves to three witnesses a week. I'm just going to remind members of what that motion is. It says:

"I move that the Standing Committee on Justice Policy meet, when the Legislature is in session, to review the matter of the Speaker's finding of a prima facie case of privilege with respect to the production of documents by the Minister of Energy and the Ontario Power Authority to the Standing Committee on Estimates and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancel-

lation and relocation of the Mississauga and Oakville gas plants, as follows:

“(1) one witness slot on Tuesday mornings, starting at 8:30 a.m.

“(2) one witness slot on Tuesday afternoons, starting at 3 p.m.

“(3) one witness slot on Thursday mornings, starting at 8:30 a.m.

“That each caucus is allotted one witness per week with the same rotation;

“That each witness is allotted a total of 95 minutes, including a five-minute opening statement, with the same rotation for questions;

“That the new meeting schedule will be effective starting Thursday, September 19, 2013.”

Chair, there has been plenty of time for a fulsome debate and, in fact, all three parties agreed to hear three witnesses a week. In point of fact, our colleague and my good friend, Mr. Fedeli, joked about missing the plowing match, but the truth is that we all have an awful lot on our agendas right now.

I would remind the committee members, because this motion appears to have been made in splendid isolation, that we have 10 committees sitting right now. With the case of the justice committee, no caucus is having difficulties calling witnesses to committee. I would suggest, Chair, that staying the course would be the more prudent thing, as no one will miss an opportunity to call a witness to the committee.

If the motion had dealt with finding a way to replace the Thursday witness, that is something that the government could very conceivably work with the opposition to support. If the intent of the motion was to have ensured that next week we continue to have three witnesses, as we have had in the past, that's something that the government would be willing to find some flexibility to deal with. But this is in fact a request to double the normal allocation to the committee. I would put it to you that this is yet another case of political flip-flopping from the opposition.

In fact, just yesterday in the Standing Committee on General Government, after a long-fought battle to see report writing on auto insurance move forward, I believe it was the NDP that teamed up with the PC Party to override their own motion and change entirely the business of that committee.

So, Chair, in the years that we've all been here—and some of us have been here a rather large number of years—there is, in fact, a natural order to committee business and we all have to work hard to be prepared for the witnesses. We have found that three witnesses a week appears to have been a rotation that has been working very, very well. In fact, this arrangement would cause a number of new scheduling headaches were we to try to intrude into committee time that, at this point, I don't know where other members are meeting and I don't know what logistical difficulties would be entailed in finding a room for the committee to meet and such things that we simply normally assume away, such as the avail-

ability of the staff from Hansard and the availability of our other committee staff, which this motion appears not to have considered at all.

In fact, if my colleagues opposite can tell us exactly what research they've done, that would be fairly helpful, but I don't think they can because this seems to have been dreamt up without any effort whatsoever to consider what are the ripple effects or the ramifications to other committees, what are the impacts, indeed, to the members who need to be sitting here, and what are the other conflicting schedules. We don't know, for example, whether there would be a room available.

1540

In fact, under the old timetable, we were often running into confusion about whose witness slot was whose. The old one had three witness slots on Tuesday and two scheduled on Thursday.

This simply gives rise to an attempt to bring in witnesses who may not be prepared and put them before committee members who will not be prepared.

Chair, it also ignores the fact that the committee has itself passed a motion to retain legal counsel. Until we have retained legal counsel, I think we should adhere to the existing schedule. It's an important thing for the committee to consider, because as we saw so vividly here today, legal counsel would almost certainly have advised the witness before us that some of the statements that he was prepared to make in his opening statement were, in fact, unparliamentary and should not have been made, and would almost certainly have advised the members of the parties as to their particular line of questioning and would almost certainly have assisted the Chair in determining what was and was not germane.

What we seem to be facing here is an attempt by the opposition to just pile on witnesses, apparently, to offer testimony that cannot be reasonably researched and cannot be reasonably fact-checked and, as such, would have importance that would be disputable to the entire committee.

Chair, pending the ability of my colleagues to refill my water glass and the length of time before my body will tell me that it has to get up to go and attend to something, I'm willing to sit here and talk about this until the cows come home, about how ill-advised and unnecessary this particular motion is.

A motion that would ask us today, on Wednesday, to open up nine witness slots next week, when the committee was not able to fill witness slots this week, seems to me to be very short-sighted and to be asking members to make arrangements with their staff to cancel meetings, to be ready to go to meetings of the Standing Committee on Justice Policy, to discuss witnesses who may or may not be able to arrive, and thus find ourselves in the position of saying, “Oh, well, that event that was on again is off again, but it may be on again, depending upon whether or not the witness is there.”

As I mentioned to my colleague from the NDP out front, as the chief government whip, just sitting here looking at this, one of my concerns is to make sure, if we

have a committee meeting, that there are human beings in those seats, ready to take on those roles, who have had the time to be briefed and are ready in every way to participate in an informed and useful capacity in the committee.

This motion here asks that this committee essentially triple its workload, and asks it to do so with no consideration whatsoever of the resources available in the Legislature and, certainly, from the vantage point of the resources available to the government caucus.

I think this is an inappropriate and ill-advised notion and would, in fact, see this committee sitting for a longer period of time and considering more witness testimony than other larger, more historical bodies and boards of inquiry in this Legislature and in others. And the purpose for this has never been brought forward by its mover.

I see no particular purpose in this. They have not begun the request in their motion with any form of preamble that indicates that there is a problem that the committee's schedule is unable to meet. As the committee has been able to obtain its witnesses and has been able to bring its witnesses here on schedule and to fulfill the requests of the entire committee, there is no particular reason to triple the number of witnesses per week when it has been fairly clear that the committee has occasionally been scrambling to deal with the three witnesses per week that we have had for nearly a year.

As such, Chair, the government considers this motion unnecessary, and it considers it unjustified. It considers that the motion has been made without reference to the resources available. It considers that the motion, having been made, is unrealistic from the vantage point of being able to access the witnesses. It's unrealistic, certainly next week, for the witnesses to have the time to get prepared. The opposition parties have, in fact, not presented any list of people that they've not heard from.

There doesn't appear to be a gap in the testimony offered by witnesses, when I think back over the amount of time we have spent together, and I have missed very, very few of these sessions, Chair. We have had an opportunity to hear a very wide range of testimony from witnesses across the spectrum. Some of them have been very, very useful, and others have been debatable as to their usefulness to this committee and their contributions to the committee's record.

I would hope, Chair, with the benefit of the comments that I've been making and some of the points that I've brought out, that members would be willing to take this motion—at the very least, this motion should be run by the House leaders. There is no indication in the motion, or in the comments made by its mover, that any of the three House leaders have had an opportunity to discuss this. If this motion were one that House leaders had recommended, the government would have no trouble supporting it. But at the moment, we do not know whether or not this motion, which, as I pointed out, appears to have been made in isolation by the PC Party, is even supported by their own House leader.

We supported a motion to sit during constituency week, and our colleagues in the NDP, in fact, cancelled their slot.

What we see here before us is a motion to ask up to nine people to come and to have a conversation with the committee, without in any way knowing, first of all, who those nine people may be; secondly, whether or not they're even available; and thirdly, what rhyme or reason this has with regard to the some 89 or 90 witnesses that we've heard from already. We have no idea, in this motion, what possible contribution to the committee's mandate this is going to make.

We had agreed in the past that a progression for this committee of three witnesses per week is fair. That should mean that all witness lists should be given to the Clerk on Monday, and that, from the vantage point of scheduling witnesses, is—to be polite—just ridiculous.

We have not determined whether or not there is committee room space. I think it would be reasonable, before further considering this motion, to have the Clerk's office weigh in on whether or not the resources required by the committee are in fact available. It's one thing to say that the committee may sit at the call of the Chair, but it's another thing to ask whether or not the resources required to put this committee together even exist from the Clerk's office, something that we had no indication of, because, of course, there was no advance consultation on this.

In fact, if the members of the PC Party, in making this suggestion, had come to see the government, we of course would have referred it to our House leaders. But the government, throughout this past more than a year—13 or 14 months now—has worked co-operatively with both opposition parties. We have supported a wide range of motions. We have worked very hard, when they've asked for witnesses from the government, to ensure that the witnesses clear their schedule and make time to come here.

1550

This one just comes right out of the clear blue. It comes without any precedent, it comes without any reason, it comes without any resources and, frankly, it comes without any justification for making it.

Perhaps among the amendments that the mover might consider would be a change that we don't sit on Monday, but perhaps Tuesday and a Wednesday, depending upon the availability of both the witnesses and the resources to do so; or perhaps the Monday and Tuesday, but not Wednesday; or the Wednesday and Monday, but not Tuesday. We could entertain a discussion about the order of witness slots so that we could consider different witnesses in different witness slots. This, of course, was not presented as an option by the member making the motion.

Chair, I am just getting started here. There's a whole host of things that I want to talk about, procedurally.

I think that for this motion, the government should be able to—as I would assume that most of the witnesses requested would probably come from within the govern-

ment. There is no way of knowing what people's schedules may be. For example, they are suggesting Liberal witnesses from 4 p.m. to 5:45 p.m. and reserving 8:30 to 10:15 and 2 to 3:45 for PC and NDP witnesses. We have no way of knowing who those witnesses are, and we have no way of knowing, at this point, the scheduling difficulties in arranging for those witnesses, which is yet another weakness in this motion that is really without precedent or need at this particular time.

I note that some of the effort that goes into preparing background on witnesses seems to be quite extensive. There has been no consideration whatsoever into the effort required by the Clerk staff to do proper, diligent and accurate work, which I submit, as a committee member, is important to me. Not only do I need to know something about the witnesses, as do my colleagues, but I think we need to know that the effort taken to research the witnesses has been fulsome enough to be able to offer us an accurate encapsulation of who they are and what they're all about.

This comes back to a point that I made earlier, which is the lack of legal counsel that should be here to serve the committee. Said legal counsel, I think, would ask that the consideration of this motion be deferred until we've determined what its impact may be on the proper conduct of business of the committee. Chair, going back to last year, we moved to consider a number of different legal firms, and perhaps the government should have been a little bit more assertive in saying we've got to get on with this, but I am saying that we have to get on to it now.

The notion that next week this committee is going to schedule nine witnesses on virtually no notice and proceed with questioning of nine witnesses without the ability to offer the witnesses sufficient advance warning, without the ability, in my opinion, of the legislative staff to do proper and accurate preparation for the witnesses, while taking members away from other things they may have already committed to or other committees on which they may already be sitting—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Bob Delaney: —because there has been no consideration of this whatsoever: I don't think that this is justified and, in fact, Chair, there is no part of this particular motion that the government feels is necessary or proper at this time. I think the part that the government would fully support would be a much more active consideration on the retention and the ability of legal counsel to get up to speed, to be able to offer both witnesses and members of this committee informed counsel, so that some of the unfortunate digressions from the mandate of this committee to which we have been subject in the last little while could perhaps be avoided.

Chair, in summary, I think there is not a single sustainable, supportable reason offered by the move.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. The floor passes to Mr. Tabuns. For committee members, members are allowed to speak for 20 minutes at a time on the motion that is before the floor. There is no limit on the number of rotations.

Mr. Tabuns?

Mr. Peter Tabuns: Call the vote.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. The floor is open. Are there any further—yes?

Ms. Lisa M. Thompson: A five-minute recess, please.

The Chair (Mr. Shafiq Qaadri): A five-minute recess.

The committee recessed from 1556 to 1601.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The committee is now in session. Ms. Thompson, I believe you had the floor.

Ms. Lisa M. Thompson: No. Mr. Tabuns does.

The Chair (Mr. Shafiq Qaadri): Fair enough. Mr. Tabuns, you have the floor.

Mr. Peter Tabuns: Call the vote.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Are there any further comments before we call the vote?

Mr. Bob Delaney: Chair, I believe I'm entitled to another 20 minutes.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Mr. Bob Delaney: Chair, I can understand the motivation of my colleagues, who feel that they have a reasonable number of people that they still want to talk with. I would remind the Chair and remind all of my colleagues that at no point has the government prevented witnesses from coming forward or done anything other than to co-operate in every reasonable way with the opposition to ensure that the committee, on a reasonable basis, has a chance to hear testimony from the witnesses that the committee has asked.

Chair, at various times over the past year our witness rosters of five have either changed or there have been fewer than five on some of the opposition rosters. Very often the opposition rosters simply changed completely from one week to the next depending upon, I'm sure, whether they like or agree with testimony or whether they prefer to follow a different line of questioning or pick up a different subject with a different witness.

So the point that I keep coming back to is that this is an unreasonable request, made without any consultation of the government, based upon a witness list that they claim exists but we have not seen. It makes an assertion that the committee has had trouble getting witnesses to appear, which is an assertion that can't be sustained, because in fact the committee has not had trouble getting witnesses to appear.

The motion seems to feel that there's some urgency in bringing in witnesses. Now, with the witness list, I think, at either 89 or 90—I can't remember which—and headed straight north toward 100, we don't see that there's any need next week for nine witnesses. The motion in fact deals just with next week. I'm not sure why there should be three witnesses every other week but nine witnesses uniquely next week. This is again something that the mover has not explained. I think it's a point that the committee really should hear. Why is it necessary for the committee to hear from three witnesses in the course of

most weeks, but nine witnesses next week? I have not yet seen a list that says that these nine people, whom in the course of the past 15 months we have not heretofore asked before the committee, suddenly need to come here with such urgency that the committee has to sit in the last week of April on Monday, Tuesday and Wednesday, virtually all day—by the way, there should be something in here in which we get some lunch out of it too—to hear nine witnesses who could have been called at any time in the past 14 or 15 months and, in fact, could be called at any time in the next I don't know how many months.

The motion may have an underlying assumption in it that suggests that perhaps the 40th Parliament may be short-lived. I would remind my colleagues across that the government has passed fixed election date laws. Regardless of what you think of the fixed election date laws, the fact of the matter is that in Ontario, they are the law of the land. A fixed election date, for the edification of my colleagues, means that it's not possible for the Minister of Finance to bring down his budget next Thursday—I believe that would be at 4 o'clock—and for the Premier to pull the plug on the 40th Parliament and say, "Surprise! We're going into an election."

What it does mean is that, following the reading of the budget by the Minister of Finance next Thursday, May 1, at 4 o'clock, it will be necessary for the House to consider the budget for a period of at least 20 hours' worth of debate, over a time span of not less than 12 sessional days. At four sessional days per week, that would mean that before the first of two votes are held on the budget, the first vote being that of the budget motion vote, we need to have some 20 hours of debate over 12 sessional days.

The budget motion vote would be the first reasonable time at which, depending upon the opinion of the two opposition parties—because you should remember that if we have a minority government, it means we have a majority opposition. So, on a motion of confidence, a majority opposition could decide at any time, as has been their prerogative over the past 31 months, to bring an end to the 40th Parliament and to bring to Ontario its 41st general election.

But the point of it all is that we can reasonably foresee that the 40th Parliament is going to last at least to and perhaps beyond Victoria Day. If I read the media speculation correctly, the media are saying that should the NDP or the Conservatives decide not to support the government's budget, although I keep hoping, Chair, that given the government's record of fiscal prudence and its record in never missing a budget reduction target—in fact, we are the only government in Canada, including the feds and including Alberta, never to have missed a budget deficit reduction target and to have delivered the lowest-cost government in Canada. I keep hoping that our colleagues in the Progressive Conservative Party would in fact see the light and choose to support the government's budget, which is something they could have done in two budgets that delivered, really, a lot of the things that the Progressive Conservatives who have

voted for Bob Delaney three times in the past decade have said to me. They said, "One of the things that we like about you and about your government is that these are the values we grew up with. This is what we want to vote for."

Chair, the point of it is that it's not realistic to expect that the 40th Parliament will come to an end before Victoria Day, and probably not for a few days thereafter, which does mean that the committee can continue its deliberations at the rate of three witnesses a week.

If the opposition feel that they need to accelerate that, I still don't see the need to go from three, with a very sharp spike, to nine and then drop back down to three witnesses, presumably, for the week following the budget. Nor have I seen this mythical list of people who are so important that they all have to be invited within the span of the very same week. Nor have I seen a list from the opposition that says, "We have determined that there's actually a committee room available." Nor do we know whether or not they even have their three people to put into this committee. We don't know the same thing from the NDP as well.

1610

What we do know is that, should there be something that's supportable in the government's budget of May 1, it is entirely possible that perhaps one or both parties opposite could listen to the reading of the budget by the Minister of Finance—who will bring down, I'm sure, a very prudent, reasonable budget that is going to address the needs and aspirations of Ontarians moving into the third decade of this the 21st century. If the budget motion carries at the end of May, it means that it becomes much more likely that perhaps, when it's voted upon toward the middle or the third week of June, the budget bill itself too would carry.

That would mean, Chair, that the committee can sit all the way through May and all the way through June. The government will certainly not support this committee sitting all through the early part of July. I think, for our own sanity, we definitely need to take a little bit of a break so that we can be in our communities and be among our families. But the government was reasonable last year with regard to this committee sitting during the summer, and we'll be reasonable again.

If there is a reasonable and a credible scenario that sees the government budget carrying when the budget motion in May or the budget bill in June is presented, it would then be reasonable to assume that, throughout May and June, the various parties would have an opportunity to call an additional 27 to 30 witnesses before the House rises for its summer recess. Following a brief sanity break in July, when members can get back to their families and back into their communities, the committee resumes its deliberations somewhere about the third week of July. From the third week of July until the time that the Legislature resumes in the middle of September would then be some seven weeks. That would involve an additional 21 witnesses.

What I have been presenting, Chair, is the ability, with the means that the committee has at its hands right now, at the rate of some three witnesses per week, to hear from an additional 50 witnesses. That would bring the number of witnesses up to 140 and headed north to 150 before Thanksgiving. Just so that members could get an idea of scale, how many are 150 witnesses? Do you know that the inquiry into the sinking of the Titanic only heard from some 150 witnesses? That's just so that members can have that as some kind of a benchmark.

Just using the resources available right now, should the budget carry, in between now and around the time that the Legislature will rise for its recess around Thanksgiving, it's entirely possible that the committee would have heard from some 150 witnesses, up from the roughly 90 that we're at right now.

I have not yet seen any list at all, let alone a list that is some 60 people in length. If this number of witnesses—

Ms. Lisa MacLeod: Point of order, Chair.

Mr. Bob Delaney: I'm not done yet.

Ms. Lisa MacLeod: No, just a point of order.

The Chair (Mr. Shafiq Qaadri): I don't believe there are points of order in these—

Mr. Bob Delaney: I'm not done yet.

The Chair (Mr. Shafiq Qaadri): All right. Ms. MacLeod, your point of order.

Ms. Lisa MacLeod: My colleague was concerned. I just wanted to point out that the Conservatives have four additional witnesses on our current rotation. We have just read into the record 55 more, for a total of 59. We have just released to the Clerk as well as to the media an additional—

The Chair (Mr. Shafiq Qaadri): As always, Ms. MacLeod, we thank you for the information update, but it is not a point of order.

Mr. Delaney, go ahead.

Ms. Lisa MacLeod: I just wanted to clarify it for the member—76.

Mr. Bob Delaney: Chair, I do appreciate the clarification. But again, in the spirit in which the committee has operated, we have worked successfully with the opposition over the span of some 16 months and have been able to arrange that witnesses have been able to appear on a reasonable and a prudent schedule. The number of witnesses outlined by the opposition suggests to me that, just with the committee sitting at its normal scheduled frequency, all of those members would be heard should the committee continue its deliberations into the fall, which I admit makes the assumption that the committee is going to persist through the summer, which rests upon an underlying assumption that the budget has a chance of carrying.

As a minority government in Canada has an average lifespan of some 18 months, where this minority government, Chair, has lasted more than 30 months, there seems to be an enduring quality to this minority government. In my recollection, minority governments of this vintage, other than the Davis minority of 1977 to 1981—I think I would be very hard-pressed to think of a minority gov-

ernment provincially or federally during my lifetime in Canada that has lasted as long as this minority government.

Resting upon that, it's not a slam-dunk to assume that there is no credible scenario that will see the government's 2014-15 budget carry. What that does mean is that if the 2014-15 budget does carry, under the scenario that I've outlined previously which would include a vote on the budget motion somewhere either just before or just after Victoria Day, and on the budget bill itself, probably—if you play out the length of time it would take for the Standing Committee on Finance and Economic Affairs to hold public hearings and then to do the detailed clause-by-clause consideration of the 2014-15 budget—it would seem that the vote on the budget bill itself would come in about mid-June.

Then I would go back to the assumptions I've been extemporizing about on the frequency of witnesses on Ms. MacLeod's list. Even if all of those people were, in fact, ones that the PC Party continued to invite to the committee—and I would hope that in that list they would produce their candidates, who we have invited, in most cases, a dozen and a half times. I hope Geoff Janoscik is on that list because we'd love to hear Geoff Janoscik. We invited him in the very first week of testimony. He just refused to even speak to the Clerk's staff, I understand.

If they are proposing to invite the entire transition team, as I think I heard correctly, then I know the government is going to be equally aggressive in insisting that some of the PC and the NDP candidates make some time in their day, after having been invited and re-invited and re-invited and re-invited and re-invited, to come to see us to tell us who it was who told them—"them" being the PC and the NDP candidates—to put out those flyers that said that if their party were elected in 2011, their party would be the only one that would cancel those two plants. We would like to have a very fulsome discussion about that because if they were going to cancel those two plants, one wonders, then, how much those sunk costs would have been. I've been dying to ask those questions of those witnesses, but those witnesses simply won't show up.

1620

My point is that on the schedule that the committee has been operating, in which we deal with three witnesses per week, we would have enough time not merely to hear all of the names—and I am going to assume that those are all real names of real people, because I've dealt successfully with my colleague from Nepean—Carleton, and I would say we have treated each other respectfully and professionally through the years and actually enjoyed dealing with one another. So I'm actually trying to find a way to work with her. What I am trying to say is, why don't we talk for a few minutes about a more reasonable and more realistic way to schedule some of these witnesses? If you feel that in the very short term you want to have a bit of a surge, let's try to find a time and a manner in which we can deal with more than three witnesses in the course of a week. As the government has done

throughout the time that this committee has been formed, the government has been reasonable and supportive of all reasonable motions made by the opposition. In fact, when the opposition has asked for key people, those key people have appeared.

I would still come back to the points that I've been making throughout: Before we deal with witnesses, we need to have proper legal counsel, and we need to know that the witnesses had time to be properly prepared, and we as committee members need to have the background on those witnesses to be able to ask intelligent, knowledgeable questions about them and to be able to have some perspective on which we can judge—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. The floor is now open for any further comments from any of the other parties.

Ms. Lisa MacLeod: Call the vote.

The Chair (Mr. Shafiq Qaadri): We have a request to call the vote.

The floor is still open. Are there any further comments?

Mr. Bob Delaney: Yes, Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, you have the floor for 20 minutes.

Mr. Bob Delaney: Chair, I'm glad I have a chance to pick up where I left off. It's really encouraging to see that for whatever value my extended rhetoric may carry, I appear to have the ability to retain a full house.

Interjection.

Mr. Bob Delaney: My colleague just talked about whether I am afraid the vote may happen. There's nothing to be afraid of, because if the vote happens, the majority will rule. If the members want to stay here until a very, very late hour and listen to me talk about things that are, I believe, germane to the committee and important and relevant to our committee mandate, that's in fact their freedom.

Chair, the important part here is that for no credible reason, we have been asked for this committee to hear from nine witnesses next week, and uniquely next week, where last week and the week thereafter the committee's existing schedule will have it hear from three witnesses. As I've done the mental math, I have shown the committee members a reasonable and achievable scenario in which, if they want to call however many witnesses they had—and I think I heard various estimates of between 50 and 70 witnesses—the committee has the capacity to hear those 50 to 70 witnesses. We are quite willing to be co-operative with the opposition in arranging that schedule. But what we've seen so far is this repeated demand that next week, without consulting our House leaders and without having appointed counsel, they'd like to go from three witnesses to nine and then presumably back to three. Chair, I don't think that that's a reasonable request. I think in light of our ability as members to evaluate the testimony given by witnesses, this would involve our various staffs having to absorb material that is prepared in haste by committees branch and may or may not be a full description of the background of a witness or, for all

we know, may contain information that's in error or out of date. It doesn't give our staff, then, the ability to prepare a proper list of questions for the members to ask.

It doesn't allow the members to be able to consult with the legal counsel, whom I have talked about repeatedly and pointed out should be here to advise the members. In fact, for that matter, it would make a lot of sense if this committee had had a lawyer and the lawyer were able to bring in my colleagues in either or both of the PC and the NDP parties and say, "Look, let's have a little chat here because, unless you want to hear the sound of the voice from the member from Mississauga–Streetsville for the balance of the evening, perhaps we should find something that's more realistic and sustainable for the committee to consider." That, I think, would be a reasonable and a prudent first step for our legal counsel.

Our legal counsel would also, in the event that these nine people come in and either make a statement that's outside the scope of the committee's mandate or begin to deal with a line of questioning that is itself either inappropriate or contrary to the standing orders, or unparliamentary in nature or even unbecoming the role of a member of provincial Parliament—which is something that all of us have taken seriously, because when I look around this room, I see members who have the trust of five different communities and have been sent here with a solid mandate to do their best for the people of those communities.

I can't believe that the people of those communities would want their members dealing with a serious matter such as the costs of the relocation of the two gas plants in Mississauga and Oakville, which is, if nothing else, fraught with detail, and to say you've got to bring people in on a revolving-door basis, you've got to sit them down, ask them questions, perhaps before they're ready and certainly before you're ready, and do so on a schedule that is going to see members, certainly by the third day, not physically able to pay complete attention, unless the intent of the member's resolution, or motion rather, is that they counter the revolving door of witnesses with a revolving door of members and substitutions, such that it's going to be very hard for anybody to determine who is asking what and to whom, let alone when.

What this motion purports to do is to take a list of names and ask committees branch to begin matching this list of names with contact data on this Thursday, April 23. And where we have normally considered that it's necessary to give witnesses a week's reasonable notice to come before the committee, something that we've adhered to for more than a year, this motion asks that the first three witnesses appear on five days' notice, which by the way includes a weekend, in which it's not realistic to be able to expect to contact witnesses at their work address. Certainly, even looking at the longest span of time, that's merely seven days. And you would be asking both members and witnesses to subject themselves to physically long days, particularly members. Also, this doesn't give witnesses a reasonable amount of time to prepare themselves. What would be the point of trying to

schedule nine witnesses in a span of three days if it turns out that not many of them are available, and we end up with a point I mentioned earlier, where members are asked to rearrange their schedules, or to substitute for other members, only to find, as you approach the time when the witnesses are set to appear, that in fact the witnesses are not available?

1630

This would mean that for members and their staffs, the various people who need to see us, the other committees that we have to serve on, the House duty that we have to do—all of the other things that govern how our lives are led, as elected members, on Monday, April 28, Tuesday, April 29, and Wednesday, April 30, have to be put into this perpetual Mixmaster in which you don't know whether or not your schedule is on again or off again or on again or off again.

It's not a very sensible or logical way for any party to act. It's perhaps one of the reasons that we think this motion was a completely ad hoc motion. It's part of the reason that we don't think that it's fair or sustainable.

Frankly, we think it is an abuse of the majority on the committee, which has never yet had a realistic problem of working with the government. The government, whenever we have been able to get together with our colleagues in the opposition to say, "Let's talk about what you're trying to accomplish" has always found a way to deliver the things that the members are trying to accomplish.

We accept that this is a committee that's dealing with an important matter that not merely the people of Ontario but also the elected members in this Legislature have charged us to look into and to come up with a set of reasonable recommendations.

It is not possible, Chair, for us to cycle these witnesses through at the rate of three a day and be able to do our proper due diligence, not merely during the time the witnesses are with us, but to be able to do our proper due diligence ahead of time in making our own preparations, setting aside the work that's required by committees branch to arrange the witnesses, setting aside the work that's required by committees branch—

Interjections.

Mr. Bob Delaney: Chair, I think the things that I'm saying are important enough that perhaps the members would want to just pay attention to them and not to—

The Chair (Mr. Shafiq Qaadri): Colleagues, if we might just have a little bit of silence.

Mr. Bob Delaney: Thank you, yes. I'm doing my best here to make my case carefully, to make it logically, and it would be very nice to know that I had my colleagues' full attention for all of that.

Ms. Lisa MacLeod: I am attentive. I am attentive.

Mr. Bob Delaney: I do appreciate that, because when I was elected, I was not elected to become entranced with the sound of my voice. Nonetheless, if members insist on hearing the sound of my voice—at the end of this rotation, they will have done so for a full hour—

Ms. Lisa M. Thompson: You're a goalie. You're a great goalie.

Mr. Bob Delaney: —they are welcome to continue to hear that.

I have to thank my colleague from Huron-Bruce for attending the most recent game in which the Ontario Legiskaters played against the Ontario Dentinators. I very much appreciated her support in the stands because—let's just say this across party lines—she was cheering for the team. The team, in this case, was all of us as legislators—all of us. That meant that when—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, unless your skating prowess is tied to the cancellation or consideration or transmittal of documents of the gas plants, I'd invite you to please—

Mr. Bob Delaney: Well, thank you very much, Chair. While I do have the ability to skate verbally, it was not I who opened the suggestion of the hockey game. But if in fact the door was opened, I had every intention of going for a quick skate around centre ice.

That's a source of unique pride for me. It was, in fact, near the end of my 54th season in the game—

Ms. Lisa MacLeod: Really?

Mr. Bob Delaney: Yes.

Ms. Lisa MacLeod: You don't even look 54.

Mr. Bob Delaney: There you go. You see?

Interjection.

Mr. Bob Delaney: My colleague from Huron-Bruce was, in fact, cheering lustily for us. You know, we almost had them. It was 7-6 at the end. You give that game another two minutes and we'd have tied it. We definitely would have tied it.

What it shows, and the reason that that conversation is in fact relevant to what we're discussing right here today is that, as members, we're able to come together to work and to find a consensus in the things that we're trying to do as a Legislature.

The reason that I continue with my remarks on why this motion should be amended, and why the government will be entirely reasonable in taking what we feel is an unreasonable motion and amending it to make it a more reasonable motion, would be that we share with the opposition a strong desire to find out what actually happened in the matter of the mandate of this committee, which is to examine the costs in the relocations of the two gas plants in Mississauga and Oakville. As we share with our colleagues opposite the reasonable desire to find out what actually did happen, what the government is offering is a chance to finish this day very quickly, but to find a more reasonable accommodation that will enable the government to be better prepared, that will enable the committee to get its legal counsel on board and that will enable the witnesses to prepare themselves and schedule themselves on a much more rational basis.

That will result for us, Chair, in an opportunity to hear testimony that is itself relevant, and to be able, as legislators, to make a thoughtful, careful consideration of what we're hearing at the committee, such that—whenever the two opposition parties choose to—whenever the commit-

tee begins to do its report writing, we've got to make sure that the report that this committee produces in fact reflects our best efforts, that the report that this committee produces reflects what we actually heard here, and that the report that this committee produces is a document that's useful, going forward, in how to site energy infrastructure, and if it's necessary to either cancel or relocate energy infrastructure, what are the things that we should take into consideration.

What we found out here is that there was really not much to go on when the time came to make a decision that all three parties agreed upon. This is a point that hasn't been debated enough in this committee, and as I appear to have all night to talk about it, I fully intend to bring out some really interesting points about how and why it is that—

Interruption.

Mr. Bob Delaney: I think that's your earring that just fell right in front of the table. I can see it right there.

I think it's important for all of us, as legislative colleagues, to spend our time considering the things that may likely happen in the future, and to look at what happened here for which there was no precedent. In the time available to me in the future, I intend to spend a fair amount of time talking about the scenarios for which there was no precedent—scenarios that I think an amended version of this motion can help us get to the bottom of, because we owe that to the people who sent us here.

We owe the people who sent us here our very best efforts, as their legislators, to be able to give future MPPs, future decision-makers in the electric power sector and future regulators a better framework than what the government had this time. This would enable people who are going to sit in these seats in the years and the decades to come to make better-quality decisions than those of us who sit in these seats were able to make in the 39th and in the 40th Parliaments. There was, at the time that we had to make these decisions, really no precedent on how to make them at all.

For example, Chair, one of the points brought out in this committee, and a point I would like to have a witness explore, was mentioned very early on by Oakville mayor Rob Burton. He brought out the point that the proponent merely had to find land that had been zoned industrial and really didn't have to deal with the town of Oakville at all. Nor did the proponent, at the time they were set to begin the construction of the power plant in Oakville—that was a firm called TransCanada Energy—have to say, “Well, is there in fact a need at this time for the energy that the plant would produce?” This is something that I'm looking forward to discussing with a witness in the weeks and months to come.

As I have explained earlier, the government has laid out a very reasonable and credible scenario in which we could be having that kind of fulsome discussion—not merely next week with nine witnesses, but through the summer and into the fall and into Christmas and into next year—if the budget carries and if the opposition so

desires, and not just the nine witnesses that they've proposed for next week but, indeed, some additional 50, or perhaps even more, witnesses with which we can sit down and discuss some of those things.

I think a lot of those factors would be a lot more germane than some of the things that this motion is going to ask us to consider, which are going to be very likely narrow lines of questioning—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. The floor is open for further comments.

Ms. Lisa MacLeod: Just calling for a 20-minute recess.

The Chair (Mr. Shafiq Qaadri): A 20-minute recess. It's agreeable, yes?

Ms. Lisa MacLeod: I'm going to go change if we're going to be here all—

The Chair (Mr. Shafiq Qaadri): All right. A 20-minute recess.

The committee recessed from 1642 to 1702.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Committee is back in session. Ms. MacLeod, I believe you have the floor.

Ms. Lisa MacLeod: Thank you very much, Chair. I wanted to briefly say—I'm not going to take the full 20 minutes—why I think it's important that we do proceed this way.

There is some speculation, with respect to timing, given the provincial budget next Thursday, that we may in fact end up going to the polls. We still have an outstanding list here. Of course, no one really knows what will happen. I think a lot of people are playing their cards close to their chest.

But I think what's really relevant here for my colleagues and I is to have the ability, Monday through Thursday next week, to have the opportunity to speak with a number of witnesses with respect to the prima facie ruling by the Speaker on the two cancelled gas plants, as well as the new information obtained through the search warrant by the OPP. In addition, we have had witnesses come in where we have learned more, and in order for us to do our jobs, we want to continue.

Today, for example, the Ontario PC Party has put forward a list of 76 names; 17 of those are members of the transition team for Kathleen Wynne. That's relevant to us, given Peter Wallace's testimony last week. Given our testimony today from Mr. Tom Adams—we asked him who he had recommended and he had said that Jamie Frost, I believe it is—

Mrs. Gila Martow: Forrest.

Ms. Lisa MacLeod: —Jamie Forrest's affidavit—there were 55 witnesses that there were former email accounts to. I think what's significant here is a number of those names are people who are contained within the OPP ITO—as well as some other outstanding concerns that we have.

Finally, we already had a list of five names that we provided the Clerk last week, one of whom showed up today, so there are four witnesses.

So in total, we have, in the official opposition, 76 other individuals we would like to try and question. Given the possibility of an election, we feel it's necessary to try and open those slots next week, particularly before a possible dissolution of Parliament.

We're suggesting that this be put to a vote. We appreciate the concerns of our colleague from Mississauga—Streetsville, Mr. Delaney. I've had a very good working relationship with him on a number of different files, and I appreciate that. We don't seem to agree here with the sense of urgency, but that is something that we feel—we have caucused this, and it is the belief of our House leader, our planning and priorities team, and our leader that this is the appropriate way to move forward.

We didn't do this lightly, nor did we do it in isolation. We considered this and its implications widely over the Easter weekend, which we just celebrated, and we thought long and hard about how to maximize the information that we need in order to come forward with, at some point, a report and possibly—depending on how an election turns out—potentially a judicial inquiry.

The important issues before us in the province—I don't mind saying that there are two major issues. One is the price of hydro in Ontario; the second is this gas plant scandal, this \$1.1-billion scandal for cancelled gas plants in both Oakville and Mississauga. It's what you hear when you are at pancake breakfasts, it's what you hear when you are at the doorsteps, it's what you hear when you're at the grocery store, and I think it's incumbent upon all of us on this committee to do what it takes to complete the job.

The best way, I think, to complete the job is to consider more witnesses. In the event that we have a snap election in the next couple of weeks, I will have felt that my job as critic of energy, as well as the Progressive Conservative lead on this committee—I will have done my job if we do continue to sit.

That's why tonight, here on Wednesday evening, in the middle of a constituency week when I could be out door-knocking, I could actually be spending time this evening with my little girl, who's nine years old, we feel—my family does, and my staff and my colleagues—that we have an important job to do, and it is worth finishing and following through with. That means that we may require to see more witnesses. In fact, we have said that we've got 76 on our list. That means that we are going to have to sacrifice our time, and that's why we're sitting here this evening.

We're willing to wait out the government. I appreciate the fact that Mr. Delaney wants to filibuster this, and I understand that he's just doing his job as the chief government whip and as the PA to energy. He's a decent man. He is—

Ms. Lisa M. Thompson: He's a decent goalie, too.

Ms. Lisa MacLeod: He's a decent goalie, too, and I appreciate where he's coming from, but we're simply asking to be able to do our jobs next week with an increase in days and an increase in slots.

I take his point. Sometimes we forget that we have a lot of support staff here, both political and through the assembly. I think it's appropriate at this point in time to thank our Clerk, as well as our research and legal staff, Hansard, the translators, the audio-visual people and, of course, the Chair, as well as all of our staff with our respective political parties.

But this is a Parliament, and Parliaments debate matters of importance to the people they represent. From time to time, it requires emergency sittings on issues that are important. This isn't new; it's part of the British parliamentary system that we adopted over 100 years ago in this chamber. Take-note debates and emergency debates occur a lot—frequently—on Parliament Hill. We're simply suggesting that this \$1.1-billion gas plant scandal and the alleged cover-up in the OPP ITO merit a frank, thorough discussion with witnesses who may know what happened, why it happened and how it happened.

Some of those people we would like to hear from, outside of Laura Miller and Peter Faist, include people like Beckie Codd-Downey, who presently works for the Minister of Energy; perhaps John Fraser, who used to work for former Premier Dalton McGuinty, and who is now an MPP; Jason Lagerquist, who is mentioned in the OPP ITO. We'd like to speak with David Livingston. We'd like to speak with Wendy McCann, who was director of communications for the former Premier, Dalton McGuinty. We'd like to speak with David McLaughlin, John McGrath, Sean O'Connor, David Oraziatti, Lauren Ramey.

1710

We'd like to talk to these people, including the Wynne transition team. If you'll indulge me, some of those names include Monique Smith—who, as you will recall, was mentioned in the presentation to this committee by Peter Wallace as somebody who would be of interest, last week, on Thursday, before the House rose for the Easter break. I indicated to the government House leader that it would be our preference to call Ms. Smith as soon as possible to find out what she knew and when she knew it with respect to the alleged deletion of emails.

We'd like to talk to Tom Allison. He would be a key witness for us, given his experience with the current Premier, Ms. Wynne.

Glen Murray, who is now a senior minister in Ms. Wynne's cabinet, also played a key role in her transition team.

Dr. Ben Levin: I'm not sure if he is still in prison or not. However, he would be of, I think, keen interest for us to question, given his role in the transition between Mr. McGuinty and Ms. Wynne.

Tony Dean; Greg Sorbara; Don Drummond, who is no stranger to these committee rooms and was on the transition team; Frances Lankin; former Liberal leader Lyn McLeod; Elaine Todres; Jan Innes; David Crombie; Maria Van Bommel; Arnold Chan; Hari Suthan Subramaniam; Angus Toulouse; Bernadette Clement—these are all individuals who would have spent time working with

Kathleen Wynne and David Livingston in the transition of power between January 26, 2013, and February 11, 2013.

That is a key time period, Chair, given that the OPP has indicated there was a super global password accessed by Peter Faist, at the behest of David Livingston, for a computer password that should have been granted to Wendy Wai between the period of February 6 and March 20.

That information we received in the official opposition, as it pertained to the OPP information-to-obtain, or ITO, search warrant changed everything, which is why I believe two things will happen. One, we will go into a spring election because it is untenable to continue to support this government. Second, it is the reason that we must hear from these witnesses I have just named and from others who we expect to hear from.

In fact, we were so disappointed with Mr. Wallace's presentation that we are calling him back in. That's key and that's important.

We've also added to our list Premier Kathleen Wynne. Each time she appears before committee we learn more information and have to continually invite her back.

It brings us to this, Chair, and this is what I think is absolutely critical: On a number of occasions, we have brought in witnesses to this committee and we haven't gotten the full story from them. In fact, we have to continue to bring them back because more information comes out, whether it's from the Information and Privacy Commissioner, whether it's from the Auditor General, whether it's from the OPP, whether it's from documents that we retained. It just appears to us in the official opposition and, I believe, to Ontarians right across this province that people aren't being forthcoming with this committee. That's a concern to me.

Also of concern is the fact that we have a Premier who is willing to go to the courts to muzzle myself and my leader, and now we're going through a filibuster.

I ask you: If there's nothing to hide, if they have given us every document, why not allow us to sit next week? Monday, Tuesday, Wednesday, Thursday—three sessions, 76 people—we'll work at making sure they appear.

We have a golden opportunity to get to the bottom of the biggest political scandal in Ontario's history right here in this committee. I dare say, in a show of non-partisanship—or bipartisanship, as our American colleagues would say—this is probably the finest group I could ever think of to work with in getting to the bottom of this scandal.

I think of my colleague from Mississauga—Streetsville and my colleague from Toronto—Danforth and my colleagues from Brampton, Mississauga and York South—Weston, and of course my colleagues here from Thornhill and Huron—Bruce, and of course our Chair, from Etobicoke. Here we are from all different parts of this province all with one goal in mind, and that's to find out what really happened. We can do it. You said it yourself: We've worked together, and we work together well.

We have a lot of questions, though. And you can't stifle it, not right now. We're so close, we can get there, but it's going to take some work. I'm confident that we can get there.

I know my colleague from—what's your riding, Mr. Singh?

Mr. Jagmeet Singh: Bramalea—Gore—Malton.

Ms. Lisa MacLeod: Bramalea—Gore—Malton—I apologize. I know my colleague from Bramalea—Gore—Malton brings his legal expertise to this committee. He has asked some very astute and challenging questions. He thrives in this environment.

I've never seen someone give a better point of order than my colleague from Mississauga—Streetsville. I've certainly learned a lot from him. He's got Bob Delaney's Greatest Hits.

We've been working hard, and I'm quite prepared to go head-to-head in this filibuster to provide my point of view and persuade my colleagues in the governing party that it is the right thing to do next week. I'm committed to sitting in this chair and asking the tough questions, and I know my colleagues in the official opposition are. I'm certainly sure that my colleagues from the third party are probably interested in this as well. I can't speak for them.

There's so much interest in the public. They are proud that we're doing this work. You hear from them. They're emailing in, they are calling in, and they're sending us messages on social media, whether that's Twitter or Facebook. They think we're doing a good job, and they want us to continue.

So I say to my colleagues in the government, I understand that your government House leader might feel that his toes have been stepped on with this. But listen: It's not about that. It's not about him. It's about getting the answers and the truth. I'm confident we can get the answers and get to the truth, but it's going to take the work.

I know we've got amazing support staff here with Hansard and our translators; they're doing a great job. I know our legislative researchers are really raring to go. They turn out probably the best briefing notes in the Confederation here. Our Clerk has been working hard. She's been trying to track down witnesses.

This is an important job. We're making history here. We're making history. Don't think for a second that, when we're in question period or here, people don't know that.

A great deal of public money was misused, in my opinion. I want to put this into perspective. To cancel two gas plants at \$1.1 billion and counting for five seats in the last election is less money than Barack Obama spent getting elected President of the United States of America—some would say the free world—probably the most expensive elections in the world.

1720

Here we are in the mighty province of Ontario, where the Liberals used \$1.1 billion to save five seats, but they used public money—public money—and then, when they denied that it cost \$1.1 billion and said it only cost \$40 million, and we pursued it, the auditor came out and said,

“No, the Progressive Conservatives are right. It is \$1.1 billion.”

Ms. Lisa M. Thompson: You know who else was really close?

Ms. Lisa MacLeod: Tom Adams, our presenter today. He actually said it was \$1.3 billion, I believe, at the time. So then we had that. But then what really, I think, has made this the scandal for the ages—actually, it wasn’t the so-called, what they say, crime.

Mrs. Gila Martow: It was the cover-up.

Ms. Lisa MacLeod: It was the so-called cover-up, with this destruction of emails, the obstruction of the Information and Privacy Commissioner and, I dare say, an attempt by Laura Miller and her friends to try and talk about something I like to call the Speaker.

We have now ended up here, with a litany of examples of how we can do better as a province and as a government, but the best way to do that is to let us do our work.

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Lisa MacLeod: I’m absolutely committed to this motion. I think it is the right thing to do. We’ve got 76 witnesses. It’s a \$1.1-billion scandal, with deleted hard drives and deleted emails, and obstruction of the Information and Privacy Commissioner. We deserve to know what happened, who knew about it and when they knew. We’re going to continue to ask the tough questions. I cannot apologize for that. I think that’s my job, and I’m going to continue to do it.

Chair, I’d like to, at this point in time, put this to a vote, call the question, and ask that my colleagues support it. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. There’s a call for the vote. We can proceed to that, unless there are any further comments.

Mr. Bob Delaney: There are further comments.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Mr. Bob Delaney: Thank you. I thank my colleague and friend from Nepean–Carleton for her remarks, to which I paid very, very close attention. There are many of those remarks that not only I, as a committee member, but the government profoundly and deeply disagrees with, most of which were her assertions on things that, frankly, this committee has not found yet. In fact, this committee has not issued a report.

I do want to go through some of the points that she has made, both some of the ones that were good-natured and tongue-in-cheek and others that I think are important points. Perhaps the most significant points made by my colleague from Nepean–Carleton that I heard were her apprehensions over—and I’m going to use her words—a snap election.

Earlier in my remarks, one of the things I covered is that in the government’s first term, between 2003 and 2007, the government passed a law fixing election dates. What that means in practical terms is that, regardless of what is or isn’t in the budget—unless the member can say that, having read the act, she has found such-and-such a scenario that would enable the Premier to dissolve the Legislature—I don’t know of a legal way in which

the Premier can go and see the Lieutenant Governor and dissolve the Legislature—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, I’d just invite you to confine your remarks to the mandate of the committee.

Mr. Bob Delaney: While I appreciate the comments, Chair, I think these remarks are germane to the motion, because some of the reasons that the member has proposed what we think are unreasonable terms in the motion are apprehensions that I detect over a snap election. If, in her turn, the member can articulate to me how such a snap election might be called—I don’t see it. I was one of those who was present when that legislation was voted on—

Ms. Lisa MacLeod: What was the guy’s name who put that bill through? The former Premier, what was his name?

Mr. Bob Delaney: When that legislation was voted on in our first term as government, our Premier at the time foreswore the ability to call a snap election. If that’s one of the motivating factors behind this particular motion that would unrealistically stack nine deputations during a week in which we normally have three, I would like very much if my colleagues opposite would explain to me how it is that they fear such a snap election would happen. If there’s merit in what they say, then I am quite willing to admit that, but I don’t know that there’s any way that this apprehension over such a snap election can carry.

There were two points that my colleague made that I thought were important ones. She said, “We have an important job to do, and it’s worth finishing and worth following through on.” I couldn’t possibly agree more. I would like to add to that: If it’s worth doing, it’s also worth doing well, and it’s worth not doing hastily. The reason that the government has objected greatly, and on substantive grounds, to this motion is that this motion would see us do our work in a manner that is not done well and would see us do our work in a manner that’s done hastily.

I am going to give the floor back to my colleague from Nepean–Carleton before my 20 minutes are up because I would like very much for her to explain to me how it is that she fears that a snap election could be visited upon us as members.

There were, however, a couple of points that she mentioned in her remarks that I think are worth the government commenting on. I am going to give the opposition this: They have managed to take this number of in excess of \$1 billion and successfully sell it as a cost that has been paid in the past. That, Chair, is false.

Ms. Lisa MacLeod: No, it’s in the future.

Mr. Bob Delaney: That’s an admission of truth that, in fact, that number is in the future. In fact, the amounts that have actually been paid out are—

The Chair (Mr. Shafiq Qaadri): Colleagues, to the motion, please.

Mr. Bob Delaney: Chair, this is an important part because, in discussing this motion, the member has brought out some points that she felt were germane to the motion.

We didn't interrupt her when she brought those points out because, if it's possible for us to find a consensus on this motion—and I thought I heard my colleague from Nepean–Carleton, in her remarks, begin to explore whether or not there is that middle ground to find a consensus on this motion. She brought out an objection on a snap election. I thought that the objection on the snap election, which was one that I hoped I had addressed—I want her, in her turn, to explain to me how that snap election would come about.

She also brought out a number of other points that, while not directly germane to the motion, seemed to be part of the underlying set of assumptions and beliefs that I think the government should also comment on because, in their turn, our comments are equally as relevant as the points brought out by my colleague from Nepean–Carleton.

She commented on the price of the two cancellations, and as the Auditor General reported and as the Minister of Energy reported at the time, in the year 2011, some \$40 million was paid out—in the past—for the sunk costs of the gas plant in Oakville. In the year 2012, if my memory is correct, some \$155 million was paid out to resolve the sunk costs with regard to the gas plant in Mississauga, with all of the remaining costs and savings—and this is the important omission: and savings—spread out over a period of some 30 years.

I asked the Auditor General, when she was before the committee, “Would it be possible to reconcile the estimates made by the Ontario Power Authority and those estimates made in the Auditor General’s report?” The Auditor General said, “I will only do that if it is by a resolution of the committee.”

1730

Now, Chair, it's very telling that the committee declined to ask the Auditor General to make that projection. However, the Ontario Power Authority did devote the effort to doing that, so let's look at those future costs and savings. Those future costs, when spread out over the span of the 30 years that both the Auditor General and the Ontario Power Authority considered the useful lifetime of the replacement gas plants, resulted in an additional cost—depending on whose scenario you choose to accept, and also how reality works out and where it lands close to—of between 0.01 cents and 0.02 cents per kilowatt hour.

In turn, the savings, spread out over the same period of time, represent—depending upon how reality works out, depending upon whose set of estimates and projections you choose to accept—between 0.02 cents and 0.04 cents per kilowatt hour over exactly the same period of time. So it's important when one mentions the cost that you keep in perspective the fact that there are also offsetting savings. It would be fair and reasonable if our colleagues in the opposition reminded Ontarians—and, indeed, their own supporters—that the projected savings over the same period in which the projected costs will occur are roughly double the costs. In other words, the savings equal two times the costs.

Another, I would say, urban myth that one needs to address is the notion that somehow or other these decisions impacted five seats. I've asked, both heckling in question period and in my own remarks in the House: Whose seats? I'd really like to know whose seats those were.

So with those comments added on to those remarks made by my colleague from Nepean–Carleton—just before I give the floor back to her—I would like her to please, in her remarks, talk about that scenario of the snap election. If they are worried about a snap election in the very short time after the budget—in other words, any scenario that would see a snap election occur before the vote on the budget motion—would she kindly elucidate to me very clearly what that scenario is, because I don't understand it.

If she is correct, I'm quite willing to admit that that's a possibility, but I do not know that there is a correct scenario that would see any possibility of there being a call of an election before the vote on the budget motion, which would require, if my memory serves me correctly, some 20 hours of debate over a period of at least 12 sessional days.

Now, she called some of my remarks—what was it?—“Bob Delaney's Greatest Hits,” and my colleague from Huron–Bruce, when she brought up—

Ms. Lisa MacLeod: No, those were your points of order.

Mr. Bob Delaney: Oh, were they my points of order? Okay. And my colleague from Huron–Bruce, of course, has reminded me that she admires the work that I do between the pipes, so I would suggest that the points of order then be called “A Compendium of Bob Delaney's Greatest Saves.”

Let me tell you something, as a goaltender, in my concluding remarks here: As a goalie, the one thing in the world that you hate most is overtime, because when you go into overtime and a forward makes a mistake, he thinks to himself, “Oh, well. At least the defence is here to clean up my mess.” If the opposing forward gets beyond the defence, the defenceman goes, “Oh, well. At least I've got a good goaltender behind me.” If you are into what is now quadruple overtime, at least from the vantage point of my making 20 minutes' worth of remarks, once you get down to being the goaltender, if it goes beyond you, the game is over.

With that, Chair, I would like to ask my colleagues: Would they please describe to me the scenario that causes them concern over a snap election?

The Acting Chair (Mr. Vic Dhillon): Ms. MacLeod?

Ms. Lisa MacLeod: Thanks very much, Chair. I'll be very brief.

(1) Obviously there is a precedent set by a federal government that did this a few years ago.

(2) If Ms. Wynne loses the confidence of the House, which I believe she will, we will be put into what I think is an election.

(3) We can have a debate, and they can call a vote at any time; he knows that.

(4) Even if we waited the two weeks, there are still a number of witnesses that we would like to see.

(5) He's curious about the five seats: One in Oakville and four in Mississauga equals five.

If he is talking about the \$1.1 billion, those aren't my numbers; that is the auditor's number. However, it was indicated by my colleague Vic Fedeli that that would have been the true cost before the auditor's report, and he was proven right. Tom Adams, who was our deputant here today, suggested during the cancellation that it would be as high as \$1.1 billion. If he would like to say that that's a savings for the people of Ontario, go ahead. No one believes it. That's all I'm going to say.

Now I would ask that the question now be put and that we have a vote on this matter in order to sit next week Monday through Thursday, every day that the House is sitting, with three witnesses a day.

The Acting Chair (Mr. Vic Dhillon): Any more debate?

Mr. Peter Tabuns: No.

Mr. Bob Delaney: Chair, I would just like the member to read the motion again, please.

The Acting Chair (Mr. Vic Dhillon): Ms. MacLeod.

Ms. Lisa MacLeod: Well, you know what? It's not my motion. My colleague Lisa Thompson put forward the motion.

Ms. Lisa M. Thompson: I certainly can read it.

I move that the Standing Committee on Justice Policy meet for the purposes of hearing witness testimony sit on Monday, April 28, 2014, from 8:30 a.m. to 10:15 a.m. and from 2 p.m. until 6 p.m.; and Tuesday, April 29, 2014, from 8:30 a.m. to 10:15 a.m. and from 2 p.m. to 6 p.m.; and Wednesday, April 30, 2014, from 8:30 a.m. to 10:15 a.m. and from 2 p.m. to 6 p.m.; and

That three witnesses be scheduled per day in the following manner: PC witness from 8:30 a.m. to 10:15 a.m.; NDP witness from 2 p.m. to 3:45 p.m.; and Liberal witness from 4 p.m. to 5:45 p.m.; and

That a witness list with up to 10 names must be submitted to the Clerk no later than end of day on Thursday, April 24, 2014; and

That the committee return to its current organization for meetings that occur beyond April 30, 2014.

The Acting Chair (Mr. Vic Dhillon): Further debate?

Mr. Bob Delaney: No, Chair.

The Acting Chair (Mr. Vic Dhillon): Okay, I'll call the question. All those in favour? And against? That's carried.

Ms. Lisa MacLeod: Chair, if I may? I'd like to say thanks to my colleague Mr. Delaney for putting up a valiant effort there. We have a disagreement; however, I'm confident that next week, we'll be able to get the work done. Thank you.

Mr. Jagmeet Singh: Just a quick point.

The Acting Chair (Mr. Vic Dhillon): Mr. Singh.

Mr. Jagmeet Singh: I have two points I want to make briefly. One is in respect to Peter Faist and Laura Miller. I'm asking the Chair that, with the consent of the committee, we re-invite both Peter Faist and Laura Miller and

advise them that the dates they provided, which were quite late—that we want earlier dates and that we ask them to consider coming sooner—

Ms. Lisa MacLeod: On the same day.

Mr. Jagmeet Singh: On the same day, sure, but ask them to come sooner. So if we can send out a letter again on behalf of this committee to both those witnesses, saying that we want them to come sooner instead of the later dates they have suggested.

Interjection.

Mr. Jagmeet Singh: That's one. The second issue is with regard to Mr. Livingston. I want it to be clear that the response provided by his counsel has a number of problems with it. One is that he is certainly entitled to have legal representation, and he certainly should, if that's his desire, seek to retain counsel to protect his interests and to ensure that he knows what his rights are and his obligations are, and that's actually fine. But there's absolutely no requirement that the committee have counsel. Whether we have counsel or whether we don't have counsel is not a prerequisite to Mr. Livingston attending this committee.

I want to make it very clear: The counsel has suggested that he can't advise his client to appear because we haven't appointed counsel. We may choose never to appoint a counsel. That's not relevant to the decision of this committee, compelling or asking someone to appear before it. I want to make it very clear that the response is unacceptable, and I would like us as a committee to respond and say that we want Mr. Livingston to attend, that he has his own counsel, and whether or not we have counsel appointed is irrelevant in the decision of his appearance.

If he is indicating that he is not prepared to attend, then we have to proceed to next steps, and we've done that before in the Ornge committee. There have been tactics that have been used in the Ornge committee as well; Dr. Mazza did not want to appear and tried different things so as not to appear.

We want to make it very clear that we want him to appear, that this is not acceptable, to say that we'll wait until counsel is appointed. I'd like to have the committee's approval for a letter of that nature to be sent.

Ms. Lisa M. Thompson: Absolutely, and I think you could be even more specific. We will pursue a Speaker's warrant if he does not attend—

Mr. Jagmeet Singh: Sure.

The Acting Chair (Mr. Vic Dhillon): Mr. Singh, I believe the Clerk—

Mr. Jagmeet Singh: Has some comments?

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes, I have comments. Okay, Laura Miller was confirmed for May 8 because she's coming in from out of town, so that has already been confirmed.

Peter Faist: In response to what the committee asked me to do, I sent a further letter saying we don't want him on video conference and gave him reiterated dates. I'm waiting to hear back from his lawyer. I think I have

something in my inbox; I haven't looked at it yet. That's the update on that.

We're looking at May 1 already—next week. Technically, Laura Miller is confirmed for the week after.

With respect to—sorry—

Mr. Jagmeet Singh: That's a good summary of those two. So now the final—

The Clerk of the Committee (Ms. Tamara Poman-ski): Are you okay with that, then?

Mr. Jagmeet Singh: Yes. Well, you're waiting—so Laura Miller is confirmed for the 8th.

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes, she has confirmed May 8. She is going to be in town at that time, and the committee knew that.

Mr. Jagmeet Singh: We did. I still think that we'd like to see her sooner, but she has confirmed. That's okay. The Peter Faist update, we're waiting to see it.

The Clerk of the Committee (Ms. Tamara Poman-ski): I have something in my inbox. I will have something for the committee next time—

Mr. Jagmeet Singh: That's fine. Then the final point is the Mr. Livingston issue.

The Clerk of the Committee (Ms. Tamara Poman-ski): Okay, Mr. Livingston: A letter did go out to him last week in response to the committee's request to say that providing—us hiring legal counsel is no barrier, basically. I reiterated our invite, and then we got this letter back. So it's up to the committee now to decide what they want to do.

An option is, if the committee would like, I could send another letter back to the lawyer reiterating that. As well, we could take further options in terms of if we wanted Mr. Livingston to come—technically, there have been two formal requests and one informal request, so if he doesn't appear, then we could request to the House for—

Mrs. Gila Martow: A Speaker's warrant.

The Clerk of the Committee (Ms. Tamara Poman-ski): Right. We could do that, but again, it's up to the committee to decide and give me direction on what they would like to do.

Mr. Jagmeet Singh: Sure. I suggest one of two options, then. Option number one is that we word it very clearly that this is our last attempt to ask Mr. Livingston to appear of his own volition. We want to make it very clear that if there is a response from his lawyer to this same effect, we will consider that a denial of our request and then we will proceed to the next step at that point, just to make it clear that this type of response, in the

viewpoint of the committee, is essentially a no, that he's basically saying no to our request for him to attend.

Mrs. Gila Martow: Why not just go to a Speaker's warrant?

Ms. Lisa M. Thompson: Well, I think what you suggested is fine.

Mr. Jagmeet Singh: I think it covers our bases a bit better to say, "Listen, we've received this response. We're asking one more time," to make it very clear that there is no obligation on behalf of the committee to have any lawyer appointed, any legal counsel appointed—that's not our duty; we don't need to have that—and that either way, he should attend.

If he responds with something similar to this, as a committee we'll consider that as Mr. Livingston basically not accepting our request, or not responding in a responsive manner to our request, and then we will proceed to the next step.

We want to make it clear that if he doesn't say, "Yes, okay, I'll come," and says something along the same line—if the lawyer has some sort of response along this line again—we'll consider that a no, basically.

Is that something that everyone agrees with?

Interjection.

The Acting Chair (Mr. Vic Dhillon): Perhaps Ms. Thompson has another comment.

Ms. Lisa M. Thompson: Okay, yes. Just a point of clarification: Should we identify a timeline for his response—

Mr. Jagmeet Singh: Yes, that's a great point.

Ms. Lisa M. Thompson: —so he doesn't push it out through next week?

Mr. Peter Tabuns: By Monday.

Ms. Lisa M. Thompson: Yes.

Mr. Jagmeet Singh: Yes, that's great. I'd say by Monday is fine, yes.

The Acting Chair (Mr. Vic Dhillon): Okay, is everyone in agreement with that?

Mr. Peter Tabuns: Yes.

The Acting Chair (Mr. Vic Dhillon): Okay.

Mr. Peter Tabuns: Those are the instructions.

The Clerk of the Committee (Ms. Tamara Poman-ski): Yes.

The Acting Chair (Mr. Vic Dhillon): That was it for today. The committee is adjourned. Thank you very much.

The committee adjourned at 1744.

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Second Session, 40th Parliament

**Assemblée législative
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Deuxième session, 40^e législature

**Official Report
of Debates
(Hansard)**

Tuesday 29 April 2014

**Journal
des débats
(Hansard)**

Mardi 29 avril 2014

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

Privilèges des députés



Chair: Shafiq Qadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 29 April 2014

Mardi 29 avril 2014

The committee met at 0831 in committee room 2.

MEMBERS' PRIVILEGES

HON. GLEN R. MURRAY

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, the Honourable Glen Murray, Minister of Infrastructure and Transportation, government of Ontario, who will be affirmed by our Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Hon. Glen R. Murray: I do.

Le Président (M. Shafiq Qaadri): Bienvenue, monsieur Murray. Vous avez cinq minutes pour vos remarques introductoires. S'il vous plaît, commencez maintenant.

Hon. Glen R. Murray: I will just say bon matin, good morning. I really don't have a statement, so I look forward to the committee's questions and insights.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Murray. I congratulate you on the shortest intro remarks so far executed in parliamentary history.

Mr. Yakabuski, the floor is yours; 20 minutes.

Mr. John Yakabuski: Thank you very much, Mr. Murray, for joining us this morning. I'm shocked that you don't have a statement, but you're giving us extra time.

What we're trying to do at this committee is to establish all of the information surrounding the gas plant cancellations and the deletion of emails—I would say, maybe, a cover-up of information following that cancellation.

The mandate, of course, of this committee is quite broad. The reason that you've been brought in is not only because of the fact that you were a member of the cabinet that approved the cancellation and the settlement with TransCanada, but you were also part of the transition team. Correct?

Hon. Glen R. Murray: I was on the transition committee.

Mr. John Yakabuski: Yes, the transition committee between former Premier McGuinty and current Premier Wynne.

Hon. Glen R. Murray: Yes.

Mr. John Yakabuski: So we're trying to find out just what the timelines were with respect to when that transition team knew what it knew and how that might affect the investigation into this. Of course, there's been new information since, after the OPP released their ITO, and that has drawn us into a whole new realm here.

You were a leadership candidate for the Liberal leadership.

Hon. Glen R. Murray: A very successful one.

Mr. John Yakabuski: Yes.

Laughter.

Mr. John Yakabuski: Oh, we're going to have comedy out here, are we? Okay.

Hon. Glen R. Murray: No.

Mr. John Yakabuski: Of course you were successful; of course you were successful. You parlayed this into a senior cabinet position. Well done.

Hon. Glen R. Murray: John, I would be the last person in the Liberal Party to get advice from on leadership runs, if you're considering. That's all I'm saying.

Mr. John Yakabuski: Well, we are going to look for some advice here, or we're going to try to find out what kind of advice you got, because—

Hon. Glen R. Murray: I'd appreciate that, but let's just keep leadership advice out of it.

Mr. John Yakabuski: —as a leadership candidate, I noticed that during that campaign—and I don't live in the Twitterverse, but we do pay attention to it—you tweeted out something to the effect that this would never have happened, this gas plant cancellation scandal would never have happened if you were the leader. That's something that you put out while you were campaigning to be the leader of the Liberal Party.

It's clear that you had a different opinion on what went down and what happened—

Mr. Bob Delaney: Chair, a point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order.

Mr. Bob Delaney: Just to make sure that we stay on track, whatever Mr. Murray's thoughts may have been during the leadership convention has no bearing on the committee's agenda.

Mr. John Yakabuski: Speaker, I'll try to establish that as we go on.

The Chair (Mr. Shafiq Qaadri): Your point is well taken. We just simply once again respectfully request you to please bring it to the mandate of the committee.

Continue, Mr. Yakabuski.

Mr. John Yakabuski: Absolutely, Chair. During that leadership convention or leadership race, you had a differing view or a contrary view as to what happened. I'm going to ask you about your thoughts as the cabinet discussions were taking place, as you were a member of the cabinet that made the decision to go ahead with that cancellation of the gas plants and hereby we have this scandal as a result of that. What was your input at the cabinet table with respect to that discussion? Did you disagree with the decision to cancel those plants during the campaign? What were your thoughts, when that issue was being discussed at cabinet, about what we were going to do with the gas plants in Mississauga and Oakville?

Hon. Glen R. Murray: First of all, I thought I was here about the transition team and not about cabinet. There are other people who were probably at the cabinet table. I think you've had Minister Chiarelli. A couple of times you've had Minister—

Mr. John Yakabuski: But since we have you we're going to ask you that because you were at the cabinet table—

Hon. Glen R. Murray: I know, but my recollections of that are very, very sketchy. It was not one of the files I was working on. I don't remember there was very much discussion of this. I think that part of the challenge is—you made a reference to the leadership issue, and I feel very strongly about this. I see it happening every day on the transportation files when politicians, in the lead-up or during an election campaign, make election commitments, as your party did, as ours did, and as the third party did. I have a strong feeling that all of us should stop doing that—the Tories, the New Democrats and the Liberals—because—

Mr. John Yakabuski: Okay, so—

Hon. Glen R. Murray: Let me finish—

Mr. John Yakabuski: No, no, no, no. This is not an opportunity for you to—you had a chance for an opening statement, Minister.

Hon. Glen R. Murray: I'm answering your question. My comment in that context that you raised, and I think it's only fair to let me respond to it, is that parties ought to stop making those kinds of commitments because I think that you would know, as a caucus member—

Mr. John Yakabuski: I'm asking for what your role was at the cabinet table during that—

Hon. Glen R. Murray: I've answered that question, I think.

Mr. John Yakabuski: Yes, okay. Thank you very much, Minister. You're saying you had very little to do with the decision that led to the cancellation of the gas plants in Mississauga and Oakville, so we're going to move on to that leadership race.

Now, because you had a contrary view—you indicated that in a tweet and probably have indicated it in other ways as well. I haven't gone over all the press clippings during that period, but you did make a number of statements and you took some bold stances during that leadership race that were different from some of your colleagues', or most of your colleagues', I would say.

You had a different view and knew, should you have been successful as a leadership candidate, that you were going to be facing this mess, the genesis of which was in the McGuinty premiership. You would be facing that as the new Premier, should you be successful. Did you ask for a briefing from senior government officials, the McGuinty or the Premier's staff, chiefs of staff or any of those people who were still in place until such time as the transition was completed? Did you ask for a briefing on the gas plant issue so that you could be fully informed as to how you may go forward should you have been successful as the leadership candidate?

Hon. Glen R. Murray: No. The nature of the transition committee wasn't to do those kinds of things. That's not what a transition—

Mr. John Yakabuski: I'm not talking about transition now, sir. I'm talking about when you were a leadership candidate. This is not after you withdrew and threw your support behind Kathleen Wynne. This is while you were a leadership candidate and hopeful to be the Premier of Ontario. Did you not ask for a meeting with the McGuinty team to find out just what you needed to know, all the facts, so if you did become leader and Premier you would be armed with all of the information? Did you ask for a meeting to have a full briefing on that issue?

Hon. Glen R. Murray: No. I didn't ask for any briefings in the two-and-a-half-month leadership campaign because we were out there trying to get elected and trying to communicate with people. I was travelling the province. In that 12-week campaign, you don't do much other than ride a bus around the province trying to listen to Ontarians and run a campaign. You don't do briefings. I don't know any leadership campaign in the history of Ontario where leadership candidates have asked for briefings from government officials. That would be precedent-setting.

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Mr. John Yakabuski: But while you were considering running for leader, you knew what was going to happen—

Hon. Glen R. Murray: As you probably know, I was president of the Canadian Urban Institute and I was working on energy planning. During this period of time—to your party—I met with one of your critics, trying to convince the Conservatives, the Liberals and the NDP that they should integrate integrated planning. I have to tell you, with no party was I successful—when I ran for leader of the party.

I've argued for integrated planning as Minister of Infrastructure and Transportation. Kathleen Wynne agreed with me, so we're now going into integrated planning.

The other thing I did when I became Minister of Infrastructure and Transportation during this period of time was to try to learn the lesson—

Mr. John Yakabuski: Okay—

Hon. Glen R. Murray: Let me finish.

Mr. John Yakabuski: But you're going way ahead of me now.

Hon. Glen R. Murray: You asked a question; let me answer.

Mr. John Yakabuski: I asked you, when you were considering running for the leadership, if you asked for a meeting, and your answer was no.

Hon. Glen R. Murray: But who would? Name one leadership candidate—

Mr. John Yakabuski: I'm not asking who would. I'm asking—

Hon. Glen R. Murray: It's a little bit—

The Chair (Mr. Shafiq Qaadri): Colleagues.

Mr. John Yakabuski: With all due respect, sir, I'm asking if you did, and your answer—

Hon. Glen R. Murray: No, I didn't. I don't know any leadership candidate, ever, in the history of Ontario, who, in a two-month campaign, asked for government official briefings on matters. I've just never heard of it. I'm not sure how you'd win a campaign. But given my success, maybe I should have taken your advice.

Mr. John Yakabuski: Well, given that you had such a contrary view to what happened, it was my consideration that perhaps you might have looked into that, to ask those kinds of questions so that you would be—forewarned is to be forearmed, eh?

Anyway, let's move on to the post-leadership period. You were a member of Kathleen Wynne's transition team.

Hon. Glen R. Murray: Yes.

Mr. John Yakabuski: You would have had the opportunity to speak to Monique Smith, who headed up that transition team, on a number of occasions, I would presume.

Hon. Glen R. Murray: Yes, probably four or five conversations. She was supporting the committee. She was not a participant in the committee as much as a supporter of it, and she was doing the logistics and organizing. She was making sure the meetings happened on time. She was managing the communications. Monique was not working on policy issues. Our conversations were about when I was available for a meeting.

Mr. John Yakabuski: I'm going to ask you some of the questions that we hope to get more specific answers to.

During those meetings, I would have to conclude that based on the press reports of the day, the gas plant issue was going to be significant. The transition team—what was your role with respect to meetings concerning the gas plant cancellation issue? At that time, there was knowledge out there, according to Peter Wallace, that there were issues with regard to the deletion and destruction of information that, by law, should have been retained. According to Peter Wallace, the secretary of

cabinet, there was knowledge, at the cabinet and the transition team level, that there was destruction of documents that you were obliged by law to retain. What kind of conversations did you have with Monique Smith on that issue, the gas plant cancellation and the destruction of those documents?

Hon. Glen R. Murray: That was not a subject the committee dealt with, for very good reasons. The committee only had a few months, and the job of the committee was to take the commitments of the party in the last election and—Premier Wynne very generously included all leadership candidates' platforms. So we took all the platforms. We had experts from outside of government who served on that committee. What the committee worked very hard and, I think, very successfully to do was to take what had been an electoral commitment and leadership commitments and make them into government programs and policy frameworks that then resulted in the Premier drafting letters of direction to her ministers to implement the program. That was the job. We were not an administrative committee looking at an administrative process or reviewing an administrative process. That wasn't the nature of it, nor was the composition of the committee appropriate for that.

Mr. John Yakabuski: So at no time did this committee talk about the issues that could be damaging to the new government? You sound like you're talking about moving the furniture around and finding out who's going to sit where and shifting some Premier office files. You never, ever talked about the pitfalls that were awaiting you as the new Wynne government, waiting to stare you in the face the minute this Legislature returned? The gas plant scandal was already being talked about. You never talked about the gas plant scandal as part of the transition team and some of the facts that we're becoming more and more aware of with regard to the deletion of government information that should have been retained, as well as the deletion of emails by staff as they were leaving, and some even when they were staying on? This became apparent after we were aware that the figures were completely bogus with regard to the \$40-million cost; the auditor put to rest that story on the part of the government.

You never discussed this issue, as part of the transition team? A simple yes or no will be—

Hon. Glen R. Murray: No. Actually, I don't get scripted by you, sir, and I'd like a little respect. Three times now you have interrupted me. I was trying to answer that question earlier and I'll tell you how it was managed.

Mr. John Yakabuski: It can be answered yes or no.

Hon. Glen R. Murray: No. Mr. Chairperson, I'd like to try to get at least three minutes out.

The way that was dealt with was, what lessons has the government learned? Because all governments make errors and everyone—the question isn't whether you're in power. All of us in this room have parties that have served in power and we all, I think, have a generally positive legacy, but every government has made mistakes and I can account them.

What was discussed was, going forward, what are the kinds of things that we want to do differently and what have we done well? So what are the successes of the last 10 years of the Liberal government that we want to repeat, and what have we learned in government?

Mr. John Yakabuski: That would have been a short conversation.

Hon. Glen R. Murray: No, it was a very positive conversation. You come from a very fine party, sir, that built a lot of wonderful things. I can show some respect for past Premiers; I think you could do the same, because we have a pretty wonderful province here, and every political party in the Legislature has contributed to it.

Mr. John Yakabuski: Okay, I think we can move on.

Hon. Glen R. Murray: One of the things, for example: We were all asked as new ministers to review all of our files to look for potential problems. Were there infrastructure projects, for example, for me as infrastructure, that may not enjoy community support, that we may want to rethink? And we want to do it early before it costs the taxpayers money.

I canvassed my colleagues, I canvassed communities, I talked to municipal leaders, and there were some projects. One of those would be familiar to you, which was the interprovincial bridge. It was very clear that there was no support for it, that money was being spent on it and that the mayor of Ottawa and all of the MPPs in all parties didn't think it was the right project. So I moved very—

Mr. John Yakabuski: Okay. The mandate of the committee is not about interprovincial bridges; it is about the gas plants.

Hon. Glen R. Murray: Yes, it was. You asked me. I was there; you weren't.

Mr. John Yakabuski: No, the mandate of this committee has nothing to do with interprovincial bridges.

Hon. Glen R. Murray: I know, but you asked about how this thing was handled. One of the things that came out of those discussions and, you will see, that Premier Wynne directed us to do was to say any major infrastructure project, anything that could have implications or costs, we've got to manage very tightly.

As I said, we handle projects now—the AFP reforms and the way we manage projects. So something like the interprovincial bridge cost the taxpayers nothing. It was managed and it was removed from the capital program—

Mr. John Yakabuski: Okay. Minister, with all due respect, I only have 20 minutes.

Hon. Glen R. Murray: —and that was a lesson, I think, that our party learned.

Mr. John Yakabuski: You had an opportunity to make a statement.

Hon. Glen R. Murray: I'm hearing from you that your party hasn't learned that lesson.

Mr. John Yakabuski: Thank you very much, Minister. Did you ever meet with the Premier's former chief of staff, David Livingston?

Hon. Glen R. Murray: Not after the leadership race. Not during or after the leadership race, no. Why would I?

Mr. John Yakabuski: Never after the leadership race. Okay.

Hon. Glen R. Murray: No. He was no longer the chief of staff to the Premier and was a private citizen. Why would I—

Mr. John Yakabuski: So at no time during the transition process?

Hon. Glen R. Murray: It would have been absolutely inappropriate for me to do that.

Mr. John Yakabuski: Well, he was still part of it during the transition process.

Hon. Glen R. Murray: Actually, he wasn't. He was not working for us; he was concluding his job.

Mr. John Yakabuski: He may well have been, but he was still part of the transition process.

Hon. Glen R. Murray: No, he was not part of any—let me be very—

Mr. John Yakabuski: Okay, so you did not meet with him?

Hon. Glen R. Murray: You asked me a question. I never had a meeting with him. He never met with the transition team to my knowledge, and—

Mr. John Yakabuski: Thank you.

Hon. Glen R. Murray: No, absolutely—

Mr. John Yakabuski: Thank you very much. What about Laura Miller? Did you ever meet with her during the transition process?

Hon. Glen R. Murray: No.

Mr. John Yakabuski: Never met with Laura Miller?

Hon. Glen R. Murray: Of course not.

Mr. John Yakabuski: Okay. Did you have any knowledge of Peter Wallace before the scandalous revelations presented in the ITO in mid-April 2014?

Hon. Glen R. Murray: Pardon me?

Mr. John Yakabuski: Did you know Peter Wallace? Had you met with Peter Wallace any time beforehand?

Hon. Glen R. Murray: I have never had a meeting one-on-one with Peter Wallace, except in discussions outside the Cabinet Office. On matters relating to cabinet, I've never had a sit-down meeting with Peter Wallace about this or anything else. I haven't had a file that's related to his particular authority.

Mr. John Yakabuski: Did you ever, during this transition process, meet with former Premier McGuinty?

Hon. Glen R. Murray: I have only seen Premier McGuinty at a funeral of a mutual friend, and we had a social conversation. I've never had a discussion. I think the gentleman deserves some private life at this point.

Mr. John Yakabuski: So at no time during the transition process did you meet with Dalton McGuinty.

Ms. Lisa MacLeod: Is he allowed to say Dalton's name?

Hon. Glen R. Murray: Yes, I actually am. He is someone who served this province very well. He's a very fine gentleman.

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Mr. John Yakabuski: So you never met with former Premier McGuinty during the transition process at any time?

Hon. Glen R. Murray: No. We never had a meeting, and he has gone on to his life and I wish him well in it.

Mr. John Yakabuski: What was your specific role on the transition team, then, Minister? Were you just one of a number of people, or did you have a specific designated role by, at that time, Premier-elect or Premier-appointed Wynne?

Hon. Glen R. Murray: I was very involved in Premier Wynne's leadership race when I exited the race to support her. I was working with her, as she wanted one of her colleagues from caucus to sit on the committee. Partly because I live in downtown Toronto, it was very easy for me to get to meetings. I was available, and I had become quite involved in her campaign, so I was familiar with her program and her platform. I was there to be a bit of a liaison with caucus, but just to work in helping look at integrating all of the different ideas that came out of the leadership campaign and looking at how we could execute that as a government program in our first year in office post-leadership. That was pretty much the job of every other member of the committee as well.

People were brought in because of different expertise. I was brought in to be a person who had some cabinet experience, who understood a little bit about how the cabinet process and caucus process worked.

Mr. John Yakabuski: Thank you. Who on that transition team, then, had specific responsibilities with regard to the gas plant cancellation and email deletion scandal? Somebody must have had carriage of that.

Hon. Glen R. Murray: As I said, we looked at energy—

Mr. John Yakabuski: Was Monique Smith the one to deal with that, or was it another member—

Hon. Glen R. Murray: No, Monique Smith was dealing with the organizational issues supporting the transition team—which were a huge logistical challenge, given that we had people from every corner of the province there—coordinating that, and in a very short period of time.

You have to remember that during the leadership race, I had said that we would end the prorogation and we would be back on February 17. One of the things that I think people don't fully appreciate, and part of the reason we had a transition team, is that that was one of the shortest transitions, I think, in the history of Ontario, going from one Premier to another in a very short period of time.

What we were focused on was—well, the Premier was working on selecting her cabinet, so we would discuss energy policy, but it was really talking about what kind of energy policy we had. We would talk about accountability mechanisms and what we had learned. If you look at the way that the reforms that we have implemented, and the training that's going on on the roles of ministerial office staff and commercial transactions—

Mr. John Yakabuski: So there was nobody that had a specific responsibility for that?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski.

The floor now passes to the NDP: Mr. Tabuns and Mr. Singh, 20 minutes.

Mr. Jagmeet Singh: Thank you very much. Good morning. Thank you for being here.

Hon. Glen R. Murray: Good morning. How are you?

Mr. Jagmeet Singh: Very well.

Hon. Glen R. Murray: Good.

Mr. Jagmeet Singh: I'm going to ask you a number of questions about whose responsibility, or whose role it was, to receive certain information. I can understand that you may not know, and if you don't know, I'm happy with you don't know. That's a very acceptable answer.

I'm just going to go through a list of a couple of things about that, beginning with—this might be a bit of a longer answer—in terms of your transition team or your transition committee briefings, were you a part of any briefings that talked about the issues that the incoming Premier would have to deal with, just generally speaking? Maybe not about—

Hon. Glen R. Murray: A lot of it was around issues of what were the key policy initiatives that we wanted to continue, that the previous McGuinty administration—which I was also a part of—had. This was a chance, because many of us run—I mean, when you run for leadership of a party, you run because you want to support some of the things that your party was doing, but in a leadership race, you want to offer a different perspective and you want to go in some new directions. So a lot of the discussion was, what's working? What do we believe in? What do we want to continue? What should be a significant change in policy and direction, and how do we want to manage our government differently than we have before?

It was a time of taking stock of 10 years in power, which is a significant time to be in power. We have learned a lot; we have a lot of experience. There is some stuff that some of us thought we could do better, that we would have done differently, in hindsight, I think, and some things that we are very proud of.

The transition team brought eyes that were at the table through that process. It also brought people from outside government, who had no experience in government, who could give us a very fresh look. So in a very short number of meetings between the last week of January and the first week of June, we were basically doing that.

For the first couple of weeks, it was really trying to get everything ready to come back to the House on, as you may remember, February 17.

Mr. Jagmeet Singh: That's very helpful.

Hon. Glen R. Murray: Is that helpful?

Mr. Jagmeet Singh: Yes, that is. Thank you very much for that.

Do you know who was briefed by the outgoing Premier with relation specifically to the gas plant scandal or the deletion of emails? Was there any one individual that you're aware of who was briefed for that, or any couple of individuals who were briefed on that specific issue? If you don't know, that's fine.

Hon. Glen R. Murray: No. Not at the transition committee, which I was a part of.

Mr. Jagmeet Singh: Sure. There might have been other individuals, but just not with the—

Hon. Glen R. Murray: And remember, at this point, much of what we know now, or what has been in the media—first of all, these are allegations, not convictions, or charges and not convictions. So there are issues out there that are the subject of investigation.

At that time, I think there was a sense of strengthening the role of cabinet, strengthening the oversight of ministers. We talked a lot about that. We felt that we wanted a stronger—ministers wanted stronger oversight and control.

There was also, particularly for the new Minister of Transportation and Infrastructure, energy, finance, health—for a number of these ministries, we wanted to increase our oversight and—

Mr. Jagmeet Singh: We'll talk about those issues at the end of the questions.

Hon. Glen R. Murray: No, but the discussions around that, if there was a reference to gas plants or anything at all—

Mr. Jagmeet Singh: To gas plants.

Hon. Glen R. Murray: —it was more in the, “Okay. We think we can do better. What does ‘better’ look like, and what have we learned?” So it was a constructive conversation, because the entire point of the committee was preparing the Premier and the new cabinet to govern and to figure out substantively on what we were going to govern as a priority, given the leadership race and the new ideas that came forward, and what our style of government was going to be.

We spent a lot of time talking about accountability. We had three former deputy ministers on the committee who shared with us their views of the relationship between management and governance and how you deal with accountability in the very transparent society we live in, and what are the changes. So that was the kind of discussion that went on.

Mr. Jagmeet Singh: Sure. You mentioned that you did have some discussions about what we would do differently, given the way the gas plant issue had come about. Do you know who else was involved in those discussions about how things should have been done differently?

Hon. Glen R. Murray: Well, the Premier was very involved in that. At the time, Andrew Bevan came to some of the meetings. There were different staff. Some of these people were not yet staff in the Premier's office, because there really wasn't a Premier's office yet; it was being constructed. But there were different—I can't remember all the staff in the room, but, depending on the situation, some of the people were people who had been—most of the people in the room were volunteers.

Certainly for the first few meetings, it was fairly fluid. Once the Premier's office was established a month or two months into the process, we had more regular attendees for that.

Mr. Jagmeet Singh: Was there anyone assigned to the team, or anyone in the team, whose responsibility was

looking at potential scandals or potential issues that the previous Premier had and how you could insulate or separate the incoming Premier from those issues, because she's a new Premier, to say, “These were the past issues. These are the different issues”—was there anyone who was assigned with looking at those two and trying to draw the line between the two?

Hon. Glen R. Murray: Not a person. The way that worked was that the transition committee and the deputy ministers had a very thoughtful discussion, and each minister undertook in their responsibilities a quite thorough review.

In my case, for example, with the Windsor-Essex Parkway, which was something where there were rumours of concern in the months after I was appointed, I very aggressively went out and reviewed all of the major projects. Eglinton Crosstown—I went through that. When I sometimes didn't hear things in the ministry, I would bring in stakeholders from outside. I did many, many round tables as a minister over months to do that.

I mentioned the interprovincial bridge. That was one that came up very early on my radar screen as a project that could cost a lot of money. It didn't make much sense and didn't enjoy much support. We were coming to a decision point about whether we spent more money on it.

A lesson learned from past years was, if we're not proceeding with the project, let's get out of the project before there is any cost. A lot of time was spent with Mayor Watson and other officials in Ottawa, as that involved other governments, to have that discussion, and we made a decision together that we would not proceed with that project.

So we were not, as ministers, as aggressive early on maybe in the past as we were in a lot of that. There's a review of the AFP process—a lot of reviews going on—as a result of making sure that mistakes that had happened before would not be repeated.

Mr. Jagmeet Singh: Sure. So I think I understand that each minister took responsibility for their own portfolio.

Hon. Glen R. Murray: And the Premier directed us quite specifically. You've seen the third party—I mean, my staff today is in all-day training on third-party transactions. They are going through a training session all day today—

Mr. Jagmeet Singh: I have another question that I wanted to ask you.

Hon. Glen R. Murray: —as a result of that.

0900

Mr. Jagmeet Singh: Sure, thank you. The other question is, was there any person—they could have been elected or they could have been staff—assigned to understand specifically the scope of the \$1.1-billion figure of the gas plant scandal? Was there anyone assigned to that task specifically?

Hon. Glen R. Murray: Well, I think the intention of the Premier at this point was, after some frustration that we were all experiencing on both sides of the House, I think—the numbers that were coming in from different sources were changing rather dramatically. The Premier's

view has been that the Auditor General had to be called in and that this committee's mandate had to be expanded. The view of the transition team was very supportive of the Premier, and our advice was to take a stronger hand in it to try to work in a non-partisan way and to bring the Auditor General in, because it was felt that, at this point, the one agency of government that was most equipped and independent to actually get to the bottom of it was the Auditor General. We had a good history with that.

The Auditor General's report, which I read quite significantly, makes the point that so much of what that number is or could be varies on a number of factors—because I think that's a 20- or 30-year period in which that money would either be expended. She was quite clear in saying that number could be much smaller. It probably wouldn't be larger than that, but it could vary by hundreds of millions of dollars. In the conversations I think many of us had with the Auditor General, she went out of her way to say that there is no such thing as a firm number here, because this is over a long period of time with—

Mr. Jagmeet Singh: That's okay. We'll get into those—

Hon. Glen R. Murray: I think that the transition team, because some of the people in the room had some financial expertise and knew something about these things, didn't need to be persuaded of that. There was enough expertise in the room that people knew these numbers were very hard to nail down, that the Auditor General should give it her best shot and that we would probably be dealing with a range rather than a specific number.

Mr. Jagmeet Singh: Sure. Did you have dealings, on a regular basis, with Monique Smith? Was that someone who you spoke with?

Hon. Glen R. Murray: Oh yes, on a fairly frequent basis. But Monique's relationship with me and the team was not about content, but about the incredible logistics that were involved in trying to manage this very large, diverse committee.

Mr. Jagmeet Singh: Sure. Peter Wallace told the committee that he had briefed Monique Smith about issues of privilege, specifically around the issues of record-keeping and how there were some problems in the Premier's office with respect to that. Did you ever hear Monique Smith bring those concerns back, that there are some record-keeping issues that we need to work on in the new era, with the new Premier—that we need to rectify some of these problems?

Hon. Glen R. Murray: No. What happened was—

Mr. Jagmeet Singh: That's fine.

Hon. Glen R. Murray: I presume she gave advice to the Premier, because what we got as ministers and what we continue to get constantly—as I said, my staff is in training on yet another dimension to this—is a commitment to what I jokingly refer to as “lifelong learning” on data. The complexity in my ministries—I have two ministries. We deal with a lot of commercially sensitive information and we deal with a lot of the personal infor-

mation of Ontarians: their health, driver status. So confidentiality—

Interjections.

Hon. Glen R. Murray: Excuse me, Mr. Chairman. I can barely hear—Mr. Chairman, I can't hear the questioners because some folks are talking in the corner.

The Chair (Mr. Shafiq Qaadri): Colleagues, we have a request for silence on the floor, or relative silence.

Hon. Glen R. Murray: A lot of what we've been doing is trying to deal with the complex balance of—we're working with the privacy commissioner. Our staffs, for the last year, have been in regular training sessions—as I said, mine is today—to deal with two areas: How do we deal with the balance between commercially sensitive information, intellectual property, and privacy information, the public's right to know and the Legislature's right to know? There's a reason we have a privacy commissioner, because some of these things are very difficult.

I'll say that some of the hardest decisions I make as a minister are around managing those kinds of information and my staff. The kinds of expertise that you need to know how to do this properly and to actually understand what the risks of unintentional or improper release are, are very tough because of social media and the Internet. There's a level of complexity—when I was mayor of Winnipeg, we had the Internet, but we didn't have the complexity. We dealt with a lot of similar commercial transactions. I never went to bed, when I was mayor, worried about managing someone's private information, commercial information or intellectual property in a way that might prejudice their life in a negative way.

Mr. Jagmeet Singh: Which is good—

Hon. Glen R. Murray: Today, I go to bed often worrying about those things, wondering if our systems work.

Mr. Jagmeet Singh: I have another question I wanted to ask you. Did you hear—and if you didn't, it's okay; we can move on to another area—any loose talk or just any discussions about the way David Livingston was conducting his affairs or his business as the chief of staff to the previous Premier? If you didn't hear any concerns about it, we can move on. Or did you hear concerns about that?

Hon. Glen R. Murray: What I often had heard is that—I mean, what I know about David Livingston or what the buzz was—there certainly was a buzz about him. He was an extraordinarily well-respected financial banker. He had done an excellent job at Infrastructure Ontario introducing a new system and, for those reasons, was appointed to the Premier's cabinet. There was no negative buzz about him. I don't know him personally, so I can't really comment beyond that.

Mr. Jagmeet Singh: Sure. That's good.

Hon. Glen R. Murray: Quite the contrary, there was no one who was raising concerns about him. I think his reputation certainly in the city with his career in the private sector was considered exemplary, competent management.

Mr. Jagmeet Singh: Okay. In terms of this file—and by this file, I mean the gas plant file—who would you say in cabinet had the responsibility of carrying this file with respect to the issue of document disclosure and the issue management? Would it be fair to say that it was the House leader, Mr. Milloy, or was it someone else you would say more so had the carriage of this file in terms of the document disclosure?

Hon. Glen R. Murray: Well, what—can you hear me okay?

Mr. Jagmeet Singh: Yes, yes.

Hon. Glen R. Murray: Okay. Well, the way it works is, the minister responsible is the minister who carries the file. I can't speak because I've never been the Minister of Energy, but as Minister of Infrastructure and Minister of Transportation I have responsibility—you know, there's that old joke that it's question period and they don't call it answer period for a reason. Today, the amount of authority ministers have relative to their responsibilities is a subject of great parliamentary debate, and one of the stresses on the parliamentary system is that the first watchdog in oversight is the minister.

Paul Thomas at the University of Manitoba writes extensively about this, which is, there's a stress that we, as parliamentarians, have to have a conversation about—

Mr. Jagmeet Singh: Just can you factor in who the responsible person is—

Hon. Glen R. Murray: It's the minister—

Mr. Jagmeet Singh: But who was it in this case, then? Who was that?

Hon. Glen R. Murray: It was still the Minister of Energy, and it would have been. The committee was not a substitute for cabinet. It wasn't a substitute for the ministerial role. We would talk about what kinds of authority should ministers have, which is where I was going, and so the new Minister of Energy, Minister Chiarelli, would have to make sure that he had the support and the resources to be able to deal with the carriage of that information and the transparency associated with energy and a lot of thought—

Mr. Jagmeet Singh: That's helpful.

Hon. Glen R. Murray: —and discussions were had with Minister Chiarelli about that, and I think he shared that with you.

Mr. Jagmeet Singh: Do you know who Chike Agbasi is? I was going to spell the name, unless you know it is.

Hon. Glen R. Murray: Chike Agbasi is a wonderful young man whose family came from rather difficult situations in Nigeria, is a Big Brother, voluntarily teaches fitness courses in the building and is a very decent, remarkable young man—

Mr. Jagmeet Singh: I have no doubt about that.

Hon. Glen R. Murray: —who is my scheduler and keeps my head above water, and if anything ever happens to him, I'm in deep trouble.

Mr. Jagmeet Singh: That's good. That's great. It sounds like you have a good relationship with him.

His computer was one of the computers that was allegedly wiped. Did he ever speak to you about this and

say, “Listen, why was my computer wiped? What happened? My computer has been deleted, all the files on it.” Did he ever talk to you about that?

Hon. Glen R. Murray: No. And you know, I'm very protective of my family and my staff. Chike was a very junior person in the Premier's office and really had no responsibilities at all that were consequential in this case. I don't think he was even aware of that at all and certainly knows—I think probably his knowledge of that—this was the person who scheduled and did organizing work for the former Premier and does the same for me. In my office he would have nothing in his records any different than he had in the previous Premier's office, in managing that. He's a very fine, ethical young man who's a role model for many young kids.

Mr. Jagmeet Singh: And in fact, he's not alleged to have deleted his—

Hon. Glen R. Murray: No, I know. He has no knowledge and—

Mr. Jagmeet Singh: And that's never been my suggestion. I'm just suggesting that his computer was one of them that was wiped, and because he has a good relationship with you, I'm wondering if he brought that up and said, “Listen, Minister, this is concerning. I mean, my computer was deleted. Why did that happen?” Maybe he—

Hon. Glen R. Murray: I wouldn't even know. I don't think he was even aware of it. He certainly never raised it with me and—

Mr. Jagmeet Singh: Sure. That's good enough.

Hon. Glen R. Murray: I mean, he's expressed from time to time concerns about what is happening out there because I think he cares about the people involved, but he has never expressed any knowledge, nor do I think he has any knowledge of the events that you're raising.

0910

Mr. Jagmeet Singh: Sure. Just turning to your practices in your ministry and as a minister, do you regularly archive your emails?

Hon. Glen R. Murray: I actually almost never use emails. Most of my emails are what are called transitory emails. They're scheduling organizational emails. When I said that I lose sleep about these things, almost any consequential or substantive documents, I do not manage; I have my deputy minister and her teams and his team manage those files.

I am very, very cautious about private information. As many of you know, you write me about people who have had drunken driving convictions, who have health issues. There are a lot of files that come into my office, so we try to deal with as little electronically as possible. My MPP liaison person works very, very closely with the responsible officials. I try to keep as much personal information and any substantive information contained in the ministry. I don't think I have turned on the computer on my desk since I have been minister.

Mr. Jagmeet Singh: Okay. So you don't check your emails yourself or you don't look at your—

Hon. Glen R. Murray: Oh, I have a BlackBerry. The BlackBerrys on here are things like: Chike just sent a

note to me a few minutes ago and said, “I hope you’re on time.”

Mr. Jagmeet Singh: Right.

Hon. Glen R. Murray: “You’d better not be late for committee. They’ll be really PO’d with you.” That’s the kind of thing that goes through this here.

Mr. Jagmeet Singh: That’s fine. So, in general, whenever you receive or send emails that are of consequence, that are important to maintaining the record under the record-keeping act, do you ensure that those records are archived properly or are stored properly?

Hon. Glen R. Murray: Yes, but, as I said—and I go back to my city hall days when I was mayor and dealt with a lot of very sensitive issues—I deal minimally in electronic media because I don’t trust electronic media. I think one should use it very sparingly and one should be very, very seriously considering when you have someone’s personal information or commercial information. We have very, very competent people. I have two very large ministries who do a very good job. Most of my work is to forward it to the person responsible, and the files are held by the ministry, so when I leave, those things are consequential.

In the last 20 years, I’ve been CEO of a private company, a not-for-profit, and I’ve been mayor of a city. I can tell you that the diversity of information management today in organizations is radically different from one to the other in what’s kept and what’s not kept. I think it’s something that every organization struggles with, and I tend to err on the side that less is more.

Mr. Jagmeet Singh: Do you send and receive emails in a way that’s transparent and subject to freedom of information?

Hon. Glen R. Murray: Yes. I follow all the rules, and my staff is trained in that.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh.

To the government side—and I apologize, Minister Murray. There are various debates going on on the optimal positioning of that microphone. In any case, Mr. Delaney.

Hon. Glen R. Murray: Thank you, Mr. Chairman.

Mr. Bob Delaney: Thank you very much, Chair, and I’d like to thank the minister for joining us during this budget week. Although these are very, very busy times, we appreciate seeing you.

Before I get started, there was a comment made by my colleague from Renfrew that referred to a finding in the Auditor General’s report as “totally bogus.” In fact, the Auditor General did confirm the \$40-million sunk costs: exactly what the minister had said at the time the sunk costs for Oakville would be.

Just before we begin—I know you wanted to get in a little bit of information while you were going back and forth with various questioners: Is there anything you’d like to clarify before I start?

Hon. Glen R. Murray: It’s interesting, because every government cancels projects. This committee sometimes,

my dear friend, is behaving like this is an outrageous thing that parties in government shouldn’t do.

The other proposition that concerns me about some of the things I’m hearing out of this committee is that somehow cancelling a project is never going to cost money. Many people at this table historically have been involved in governments that have done that. If I could just offer an example, the Eglinton Crosstown subway was cancelled by the previous government, which was unusual because they promised during the election that they would not cancel it, that they would complete it. They broke that promise and they decided to cancel the project.

They then were asked by the city of Toronto not to fill in the subway hole. They did exactly that. Not only did they fill it in; they filled it with concrete. I discovered, as minister, just last week, that what was supposed to be two months of excavation work—

Ms. Lisa MacLeod: On a point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Point of order, Ms. MacLeod.

Ms. Lisa MacLeod: I’m sorry to interrupt the minister. I just think it’s important that the committee knows that one of our valued and trusted journalist colleagues has passed away: Jonathan Jenkins. I just want to give my condolences to his family and let the minister and others know.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacLeod. On behalf of the committee, I don’t think any of us were aware of that. We appreciate it, and our heartfelt condolences to the family.

Hon. Glen R. Murray: That is very sad, indeed, and I certainly express my condolences to the family.

Mr. Bob Delaney: And we all did very much like him.

I’m sorry, Minister.

Hon. Glen R. Murray: That cost the taxpayers a quarter of a billion dollars, and it has delayed the Eglinton Crosstown seven months. Why you would fill in the subway is beyond me. Unless you have an anger management issue, I’m not sure why you would put concrete there. When I hear these moral pronouncements from the official opposition, this is—

Mr. John Yakabuski: On a point of order, Speaker.

The Chair (Mr. Shafiq Qaadri): Point of order, Mr. Yakabuski.

Mr. John Yakabuski: I think it is very clear the mandate of this committee is to delve into the issue surrounding the cancellation of the gas plants in Mississauga and Oakville. It is not the mandate of the committee to talk about what someone may or may not perceive as the mistakes of a previous government. That is not the mandate of this committee. I think that it would be right for the minister to stick to the mandate in his answers, just as we’re expected to stick to the mandate in our questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. Ostensibly, your point is well taken, although I could simply say that the word “cancellation” appears

in other areas, other domains, so perhaps that is the linkage. Continue.

Hon. Glen R. Murray: I think that this is very much the mandate of this committee. It is to look at the mistakes of previous governments and to lessons learned. One of my propositions would be, if you look at things like Windsor–Essex, if you look at things like the inter-provincial tunnel, this government has demonstrated that it has learned the lessons of the history of this province.

One of the lessons that I, quite frankly, have studied quite closely is the Eglinton Crosstown, because it's now a \$5-billion project, which is hugely consequential. We lost 35,000 jobs, and many of us in Toronto believe that the Don Mills commercial lands did not get developed because that transportation infrastructure never came in. I'm hoping that the committee is going to look at this whole history of what causes governments to cancel that, because if you were outraged at the gas plant issue, you should certainly be even more outraged at the quarter of a billion dollars that was wasted on the Eglinton Crosstown. Where this is different is, this wasn't a promise made by all parties; it was the reversing of a promise made by all parties, because every party in that election said they would complete the Eglinton Crosstown. It didn't do it. There's a complete lack of accountability.

If you run for office on the public trust and you promise to do something and you don't do it—in this case, all three parties promised to do it, and we did it. If you're asked not to take on additional costs by filling it and then you put a concrete bunker down there that costs a quarter of a billion dollars in throwaway costs—this has been the problem.

To have moral authority or integrity, I think you have to hold yourself to the same standard. I'm quite happy to articulate the last 30 years of cancellations. People are suggesting that a government that got elected to fulfill a promise and executed that promise is somehow held now to a higher standard than others are prepared to hold themselves. As we're in an election, I can tell you, as the Minister of Infrastructure and the Minister of Transportation, I hear political promises being made that I doubt are viable by the opposition parties, and if they are true commitments, they are going to result likely in cancellations. This is not a practice that has gone away.

One of the things that our government has done is that we have spent a lot of time costing and managing and reviewing projects. I would say quite candidly that we have learned those lessons. I'm hoping that this committee, that has now had 89 witnesses, 135 hours of discussion, at one point is going to say, "Enough is enough." It's quite transparently clear that the government has already taken the kinds of actions that I hope this committee does.

I disagree with the honourable member from Renfrew: That's exactly what this committee is supposed to be doing. It's supposed to be looking at the mistakes of past governments, and I think it could look at many others that are much more instructive than the gas plants issue.

The Chair (Mr. Shafiq Qaadri): Minister Murray, we accept your remarks and we thank you for the

recount. But I would just, once again, invite you to please speak to the mandate of the committee.

Mr. Delaney, go ahead.

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Mr. Bob Delaney: It sets the matter of the planning, commissioning, cancellation and relocation of infrastructure projects in some perspective. I do thank the minister for his very fulsome explanation.

The opposition has asked you here today because clearly you were a member of the transition team, and you've spoken quite a bit to this. Would you expand a little bit with the committee today on the workload involved in making the transition from one Premier to the next?

Hon. Glen R. Murray: It was quite huge, especially after a number of us got our assignments, because you've got to remember that all these people were working. They were volunteering their time away from their families. This was a lot of people from the private sector, from labour, from environmental community groups, from the farm communities—because the Premier, as you know, made a commitment to be the Minister of Agriculture and Food. So there was a lot of time spent integrating things, because—I'll give you an example. Time was spent looking at: How do our large institutions buy more local food? That was one of the things. We had people who understood the health care procurement system in government, and people from the farm community, looking at how the purchasing power of the public sector could drive more food. There were things that were really looking at: What were major initiatives where the Minister of Government Services and the Minister of Agriculture would have to work together, and what were the kinds of priorities and what were the kinds of things that should go into minister's mandate letters to ensure that they were reflected?

A lot of time was spent on accountability. I talked a little bit about that. I went through all of the projects and said, "Is there a project that we've committed to not proceeding with or proceeding with that ought to be rethought?" I think one of the lessons of not just the subject of this committee but of many past governments is commitments that are made during elections, where people, I think, aren't fully aware of the consequences of getting into government, and they make a costly mistake. We looked at a lot of the major projects, whether it was Windsor, whether it was the tunnel in Ottawa, and also reviewing those that were—

Mr. Bob Delaney: Just lean back a little bit from the mike.

Hon. Glen R. Murray: I'm sorry. We spent a lot of time doing a very thorough and systematic review. A lot of work was done in training staff on how to manage that. We had a number of people who had some expertise in information technology and talked a lot about the need for training of staff and ministers and folks in that. A lot of time was spent on: How do you govern to a higher standard of accountability? Because I think the feeling was that we were now in a very different world of social

media. There was a day when conversations, telephones, and written mail were the totality, and that was 10 or 15 years ago. What are the best ways for governments to manage information in a transparent way, but also in a way in which you can protect private information and you can protect intellectual property rights and you can protect commercially sensitive materials? A lot of time was spent on how ministers do that, and that continues to this day. I don't think that we, quite frankly, fully understand, in the public sector. I think many people in the private sector—banks, particularly; large hospitals—are all struggling with these issues. What do you get rid of to protect people and what do you keep for public accountability?

Mr. Bob Delaney: What were your personal experiences during this time?

Hon. Glen R. Murray: It's a very exciting time. I have to tell you, I was learning a lot through the transition committee. It was an incredibly bright and talented group of people whom I'd never had—the great privilege of politics, I've always said, is what you get to learn and from whom you get to learn it. The tone at the committee was that this was the first woman Premier of our province. For the women on the committee, it was extraordinary, because the first-person experience was very different. We were very much consumed with the idea that within about two or two and a half weeks, the Premier had committed us to being back in the Legislature; there would be no extension of the prorogation. So we had less than three weeks to get our poop together, so to speak, and we were working very, very hard—day, night and weekend—trying to get the government program together, realizing that there would have to be a throne speech and a budget very quickly thereafter.

I think you see it in things like high-speed rail and regional express rail. A lot of the seeds of what you now see in the government's program were put on the table by some very dedicated Ontarians through that process. It was, and continues to be, a very exciting time to be in government.

Mr. Bob Delaney: There are allegations about who knew what with respect to an administrative right to some computers during the transition period. Do you recall any meetings during the transition period where administrative access to a group of computers was discussed?

Hon. Glen R. Murray: It was never discussed. The first time that I ever heard about it was when I picked up a newspaper and saw it on the front page of the newspaper. This was not something that was part of a conversation; nor was anyone even aware of it. The OPP investigation had not begun. I don't know anyone who was aware of that. It certainly was never a topic of conversation at the committee.

Mr. Bob Delaney: When secretary of cabinet Peter Wallace was invited to testify before the committee for a third time about two weeks ago, he talked about that transition period, and he said it was a very, very busy time. You talked about it as well and talked about some

of your experience. We asked Mr. Wallace a question about the division of the offices, as Premier Wynne was not officially sworn in, nor did she take office until February 11. I'm going to read a couple of statements, because I need these statements to preface the question I'm going to ask you.

He said, "I know that there was a transition suite associated with the incoming Premier. I know there was a suite dedicated to the offices of the outgoing Premier."

Could you tell the committee what your experience was? Was this the organization, of the two separate offices?

Hon. Glen R. Murray: It was very separate, and it usually is. I had been through one other transition when I was the incoming mayor of a large city and there was an outgoing mayor. I know that many of my colleagues have been through that. There is not a lot of communication between those two folks, for a number of reasons. It's a very sober and sensitive time for people. I think all of us will leave this place at one time. It's a time of reflection. Generally, you trust the outgoing administration to take care of business; at least, that certainly has been my experience through that. The incoming administration operates separately. When you have the short time frame that we had, you are very possessed of the responsibility to look forward and govern. You don't have a lot of time to spend looking in the rear-view mirror. Any of us who have been through transitions—and I've been through more than one of them—know how that functions.

Mr. Bob Delaney: Okay. When Mr. Wallace was here he confirmed that he had not briefed Premier Wynne on the deletion or handling of emails or electronic documents from the former Premier's office. He also confirmed that he had not briefed Premier Wynne's transition team or the Premier herself on the requests that Mr. Livingston had made.

To this end—and I'm just going to beg your indulgence to go through a couple of things that happened in the committee—there was an exchange in the committee between Peter Wallace and the opposition from Mr. Wallace's last appearance here.

The member for Bramalea-Gore-Malton asked, "From February 7 until today, have you ever briefed any political staff about the deletion of emails, wiping of computers or the special administrative right provided to David Livingston?"

Mr. Wallace responded, "I know absolutely that I have not provided any briefing to the Premier."

During that appearance, the member for Nepean-Carleton asked, "Did you not find it necessary at any point in time to go to Dalton McGuinty or to Kathleen Wynne to explain that this was happening?"

Mr. Wallace said, "I did not."

Were you ever briefed on this issue?

Hon. Glen R. Murray: No. I have all my briefing books as minister. Deputy ministers and senior officials determine the content of that. For a new Premier, I don't know how they possibly do that, because I know, as a minister with two ministries, that it was two months of

briefings—two months, several days a week. I went through thousands of pages on hundreds of projects, and I have one small percentage of government. I think that what Mr. Wallace said is quite accurate. The Premier would probably have been overwhelmed. Remember: She didn't have the same lead time that other Premiers had. She only had until the 17th. She had to be up in the House, and then she had to figure out her briefings after that.

The content of what is critical in material: These kinds of issues, I would presume—though I can't say, because I wasn't in the room—would have been for the new Minister of Energy, who would have been briefed on the matters that related to his file. I'm sure that the deputy minister there and the minister have already appeared before the committee, so you would probably know more about the contents of those briefings, but they would be assigned to ministries, just out of the pure practical reality of the number of critical issues that the Premier would deal with that would become consequential or difficult if they were not dealt with.

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When you go through a transition—you've now had a period of several months where you've had a Premier exiting, so a lot of decisions get parked, right? Probably from October on, the previous Premier was not making a lot of commitments. So when you immediately become a minister or Premier you're dealing with six months, often, of decisions that have been delayed. So that would have been an incredible time for the Premier. I would not have imagined, during that particular period of time, that there would have been a lot of time to sandwich in issues that were not 24-hour, urgent, have-to-make decisions.

Mr. Bob Delaney: Okay. I think that removes any ambiguity in that.

Let's talk a little bit about some of the openness measures. Again I'm going to give you a little bit of a preamble on this. The release of the Information and Privacy Commissioner's report prompted some significant changes across the breadth of government. The report this past summer on document-retention practices by the government—which was another item on which the Premier moved to lead the way—gave direction to all political staff on the need to be responsible and diligent on retaining documents pertaining to government business, and it also ensured that new training procedures were put in place.

As I'm sure you're aware and have put into practice, our government implemented mandatory record-keeping rules and mandatory staff training, and new rules limiting political staff involvement in commercial third-party transactions.

Last October, Premier Wynne made a public commitment to introduce new rules to clarify political staff involvement. In fact, the Ministers' Staff Commercial Transactions Directive clarifies the responsibilities of political staff while preserving the integrity of the government decision-making process. You may also recall that the directive was approved by cabinet and rendered effective on April 1, 2013.

Following this—and here's the question—an all-staff email was sent by the Premier's chief of staff, Tom Teahen, to ensure that all staff was aware of their responsibilities under the new directive. In your ministry, have you trained your staff on this directive?

Hon. Glen R. Murray: They have been in constant training. They're in a training session today, interestingly, which has made this morning a little crazy, but they're learning the new rules for commercial contract negotiation. Today, they're in an all-day training session with people with legal expertise on what the relationship is between political staff and officials of agencies and ministries in dealing with matters of contracts—

The Chair (Mr. Shafiq Qaadri): One minute.

Hon. Glen R. Murray: —and what they can do that is binding. These are a complex set of relationships and a very substantive matter.

They've also all had training on transitory emails versus others in archiving, so it's a constant program that continues.

Mr. Bob Delaney: Thanks, Chair. I'll stop here on this round.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side: Mr. Yakabuski, 10 minutes.

Mr. John Yakabuski: Thank you very much, Chair. We'll just go back right into it, Minister.

A couple of things: Someone on the transition team would have been made aware, and then would the team, including yourself, have been made aware, of the responsibility to retain records?

Hon. Glen R. Murray: Yes, because everything that we've been doing has been relating—I just explained that. There has been constant training, and there was discussion about how you manage projects—what had we done well that we need to keep repeating doing? And there was a discussion—

Mr. John Yakabuski: Did someone specifically made it clear that records must be retained? Was that part of the transition team's direction?

Hon. Glen R. Murray: It didn't get into that level of minutia because these were fairly senior executive people involved in this. It was about the kinds of things that ought to be put in directions to ministers, which since have been, and the kinds of training.

I will tell you, in the discussions that I had over coffee with some of the folks on there—I got into a discussion, because it's a particular interest of mine, about the issues of privacy, intellectual property and commercially sensitive information. I think that there is a whole world of expertise and challenge—there isn't an organization in our society right now that isn't having some challenges getting it right. So obviously the kinds of expertise that we need, the kind of training that we need—it was talked about in broad strokes.

Mr. John Yakabuski: Thank you, Minister. We understand that, but we only have 10 minutes. We can't get into long answers for short questions. Your scheduler, J.D. or what—

Hon. Glen R. Murray: His name is Chike Agbasi.

Mr. John Yakabuski: Chike—his computer was wiped. His computer was one of the ones that was wiped.

Hon. Glen R. Murray: I've been told that. I don't know. I don't think he would have known. He had left the office quite promptly thereafter. He did organizational work for the Premier and logistics work for the Premier. He was in a clerical, administrative, junior position in the Premier's office. So he wouldn't have been part of any other discussions at that level.

Mr. John Yakabuski: No, I'm not saying about discussions. But we would have no idea at this time, then, what would have been on his computer. That's gone.

Hon. Glen R. Murray: Well, you're asking me a question, and I don't know. I trust the OPP, I trust forensics, and I trust the—

Mr. John Yakabuski: But you spoke about the integrity of this gentleman and everything else, and I'm not questioning that. But at this point, the fact that that was one of the computers that was wiped clean—we have no idea what information was on that hard drive.

Hon. Glen R. Murray: Actually, I think the Auditor General's report was insightful. I have a lot of trust in the OPP, and I think we should let them do their jobs.

Mr. John Yakabuski: Yes, well, thank you. But we have no idea what was on that computer at this point, and it's not going to be found, because it was wiped. It was one of the hard drives that was wiped.

Hon. Glen R. Murray: I didn't know that you were an information technology expert. I can tell you, having been a mayor, I've seen a lot of white-collar crime reports. If I were you, unless you have that expertise, I would not—

Mr. John Yakabuski: Maybe if you could let me ask the questions, you might be able to do a better job of giving the answers, but you're interrupting me in the middle of a question.

Hon. Glen R. Murray: Well, now you know what it feels like.

Mr. John Yakabuski: Well, it is my 10 minutes.

What was the date of the hiring for people in the new Premier's office?

Hon. Glen R. Murray: I don't know. I'm not her chief of staff. You'd have to ask Kathleen. I'm not sure how that's relevant, but we all went through a process of trying to get very talented people to work for relatively low wages compared to what they could make somewhere else. I'm sure she had the same challenge.

Mr. John Yakabuski: Okay, so you don't know the date of hiring of people in the Premier's office. I'm going to go back to something that you said in the first round of questioning. You talked about one of the things you were doing in the—I'm paraphrasing you, because I don't have, obviously, Instant Hansard. One of the jobs of the transition team was to see what went right, what went wrong and how we might change things. One of the things you were doing was drafting ministerial letters for the ministers that—

Hon. Glen R. Murray: No, we weren't.

Mr. John Yakabuski: Well, something to that effect. You were drafting—

Hon. Glen R. Murray: Okay, so I want to be clear here, Mr. Chair. Your party, recently, when I did an interview—

Mr. John Yakabuski: No, no. This is a question—

Hon. Glen R. Murray: No, but this is an issue of integrity, and it's a point of privilege. I'd like some assurance from the Chair that the records of Hansard will be shared, because here's a problem I'm having—and this is my reputation as a witness here, because I am a citizen. As an MPP, I don't have the protection of the courts or the law.

Mr. John Yakabuski: Chair, this is—

Hon. Glen R. Murray: I'd like not to be interrupted.

Mr. John Yakabuski: —not going to be using my time for this.

Hon. Glen R. Murray: Because unless you want a lawsuit from me, then you'd better listen.

Mr. John Yakabuski: Okay, now you're threatening people and members of this committee?

Hon. Glen R. Murray: No, I'm being very clear, because here's the challenge—

Mr. John Yakabuski: Minister, I think you'd better settle down.

Ms. Lisa MacLeod: Point of order, Chair.

Mr. John Yakabuski: Now you're threatening me with a lawsuit?

Hon. Glen R. Murray: No, I have a point of order, and I would just like to—

Mr. John Yakabuski: Chair, I'm asking a question, and I'd like the opportunity to ask the question.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, point of order.

Ms. Lisa MacLeod: I invite the witness to answer questions. He's allowed to do that. We do have privilege in this committee, number one. Number two, members of our caucus, the Ontario Progressive Conservative caucus, will not succumb to any more threats from the Liberal party—

Hon. Glen R. Murray: Mr. Chairman, is she making a speech or what?

Ms. Lisa MacLeod: —whether it is from the Premier herself, this minister or the Working Families Coalition.

Hon. Glen R. Murray: Okay.

Ms. Lisa MacLeod: We won't be muzzled.

The Chair (Mr. Shafiq Qaadri): Thank you. We accept your point of order. We'll remove the aura of threats.

Mr. Yakabuski, I offer the floor to you. I would respectfully ask all my colleagues to please conduct themselves in a parliamentary manner, but also allow each other to both pose and respond to the questions.

Mr. John Yakabuski: I'm not threatening anybody.

The Chair (Mr. Shafiq Qaadri): You have five minutes and eight seconds left.

Mr. John Yakabuski: Thank you very much. The way I heard it was that there were directions with regard to ministerial letters. My question would be: What ministerial directions or what information was given to the potential incoming Minister of Energy with regard to the

gas plants? You said that you wanted to know what things were right and what were wrong. Clearly, there was no question that the gas plant was one of the things that was wrong. It was causing you a great deal of problems. So what advice, what letters, possible letters, if that's not—you tell me what was said. We'll all review—

Hon. Glen R. Murray: Well, I will tell you what was said, but—

Mr. John Yakabuski: I'm not done—we'll all review Hansard later. But what direction was given to the Ministry of Energy and/or the potential incoming minister as to what they should be aware of with respect to this gas plant scandal? That was part of the transition team. So what direction was given?

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Hon. Glen R. Murray: The direction that was being discussed was—we were not writing mandate letters for ministries. Committees don't do that. Only the Premier does that, and that's confidential and that's up to her prerogative. What was discussed at the committee are what are the kinds of things that the government must exercise great concern over.

The reason I raise this issue is because we're in the process here—and I appeal to you as a colleague. The issue came up recently where I had clearly done an interview where someone had suggested that I had suggested that there were health and social services cuts to fund transit. In the interview, I said—I gave a one-word answer to the interviewer and the answer was no. The question was asked again and it was no, and members of your caucus repeated something that wasn't true, that somehow I had said yes. That was not true. So when I answer a question—

Mr. John Yakabuski: It was in the media, sir, so that shouldn't be—that's another discussion for this—

Hon. Glen R. Murray: Well, no, it is, because this is a reputational issue. This is the question that was asked on CFRB. The host: "When you say that the general revenues currently go into things like health care and education, does that mean there will be cuts in those areas to pay for this?" Murray: "No." It goes on twice: "No." So I give very clear, singular answers, Mr. Chairperson, and I'd like some assurance that there is going to be—

Mr. John Yakabuski: Chair, this is not answering my question. This is a diatribe about what he doesn't like being said.

Hon. Glen R. Murray: —some accountability for people to actually tell the truth.

The Chair (Mr. Shafiq Qaadri): Colleagues, I am prepared to recess the committee if we cannot come to some measure of cordiality and—

Mr. John Yakabuski: Well, the minister can't go on—

Hon. Glen R. Murray: Well, then stop misrepresenting what those of us are saying when we testify and we give you answers.

Ms. Lisa MacLeod: Point of order, Chair.

Mr. John Yakabuski: Chair, he is challenging a member of this committee. I have not been—

Hon. Glen R. Murray: The member for Nepean has been sued enough times. She should have learned something by now.

Mr. John Yakabuski: —I am asking a question.

Ms. Lisa MacLeod: Point of order.

The Chair (Mr. Shafiq Qaadri): Colleagues, colleagues. I'd respectfully ask all members to please adopt parliamentary language. We all are under parliamentary privilege.

Mr. John Yakabuski: Well, he's accusing a member of committee of misrepresentation.

Hon. Glen R. Murray: I am.

The Chair (Mr. Shafiq Qaadri): I appreciate that, and that's—

Hon. Glen R. Murray: You're saying things that are not true, and I've just read the facts—

Mr. John Yakabuski: I asked you to clarify that. I said I was paraphrasing.

Hon. Glen R. Murray: —so maybe you can apologize to me for misrepresentation of my views.

The Chair (Mr. Shafiq Qaadri): Colleagues.

Mr. John Yakabuski: Minister, I said I was paraphrasing.

Hon. Glen R. Murray: And I'm waiting for an apology, my dear friend.

The Chair (Mr. Shafiq Qaadri): You've got three minutes left.

Ms. Lisa MacLeod: Point of order.

The Chair (Mr. Shafiq Qaadri): Yes, Ms. MacLeod, a point of order.

Ms. Lisa MacLeod: I would ask that the witness stop implying unparliamentary motives toward my caucus colleague and our entire caucus. He was invited here to shed some light on the committee's mandate. He is refusing to do that. But he does not have to engage in accusations and threats toward my colleague or my caucus.

The Chair (Mr. Shafiq Qaadri): To echo that, Ms. MacLeod—

Hon. Glen R. Murray: I'm not engaging in threats.

Ms. Lisa MacLeod: It's a point of order; you don't have a response.

The Chair (Mr. Shafiq Qaadri): I would invite all members to please adopt parliamentary language and positioning.

Mr. Yakabuski, your three minutes remain.

Mr. John Yakabuski: I want to make it clear, Minister: I never said you said this. I said that I was paraphrasing. I gave you the opportunity to clarify what you said.

Hon. Glen R. Murray: So that is not what I said.

Mr. John Yakabuski: Okay, thank you very much. But it is not an opportunity to go into some diatribe about your hurt feelings about something that was said a couple of weeks ago.

Hon. Glen R. Murray: No, it just has to do with integrity, which is the subject of this committee.

Mr. John Yakabuski: Of which you have accused me of not having, so thank you very much.

Hon. Glen R. Murray: I have accused your colleagues of saying things that you know are not accurate.

Mr. John Yakabuski: Now, Mr. Peter Wallace would have met with Monique Smith on a number of occasions during this transition period. While he didn't directly talk to them about the deletion of emails, it seems to be, in the Hansard from Mr. Wallace's testimony, that he covered a lot of things. For example: "Of course, they would have dealt with the issues that were vital and in front of this House, including issues of the privilege of the Legislature...." That's part of his testimony at this committee.

Would it be reasonable to expect that the transition committee, in the conversations with Peter Wallace through Monique Smith, who was sort of the liaison or the chair of that transition team, would have been well aware that there was a huge concern on the part of the secretary of cabinet with the way this whole email deletion, hard-drive destruction scandal was being played out with respect to David Livingston and his request for special administrative codes—to be able to do that—and then using Laura Miller and her boyfriend, Peter Faist, as, I guess the facilitator—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. John Yakabuski: She was the facilitator, and he was the guy who actually did the deed. There was clearly a tremendous amount of discomfort on the part of Peter Wallace, and that would have been relayed, I think, pretty clearly to Monique Smith as the chair or whatever of the transition team. Were you people made aware that there was a level of discomfort on the part of the secretary of cabinet, who is the highest-ranking civil servant, with how this whole thing was happening in regard to destruction of documents?

Hon. Glen R. Murray: Well, no, because I think Peter Wallace answered that question for you, which is that he did brief those people on it. I mean, you're talking about one of the most respected public servants, who gave you an honest answer, and hopefully you'll accept the honest answer that he gave. I have nothing that I can add to that except to say that anything that I have been told or saw was completely consistent with what Mr. Wallace expressed to the committee. And he would know.

Mr. John Yakabuski: Thank you very much, Minister. I only have about 15 seconds left, and I don't have time to ask another question. Thank you very much for coming in today.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski.

To the NDP side: Mr. Singh.

Mr. Jagmeet Singh: Thank you very much. I'm going to ask you some questions, sir, about the transparency of infrastructure projects. You would agree with me that you try your best, obviously, to make sure that the infrastructure projects in Ontario are managed in a transparent manner, right?

Hon. Glen R. Murray: Yes.

Mr. Jagmeet Singh: In terms of the gas plant scandal, there's been some issue with respect to questions around

full transparency that was not satisfied, and, as you've testified, you're currently trying to make amends for that and make sure that things are done—

Hon. Glen R. Murray: I think we're governing—the Premier said very clearly that she wanted more openness. She widened and expanded this committee.

But I'll give you an example of some of the frustration we have. You're asking me a serious question and respecting the process, and, sir, any answer I've ever given to you, you've accepted as truthful, and I've never had you saying something contradictory. This has become a bit of an insult to those of us who serve in the Legislature who don't have the protection of the courts, because the official opposition has done nothing but talk and joke through it, and quite frankly, don't do that—

Ms. Lisa MacLeod: Chair, a point of order.

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod, a point of order.

Ms. Lisa MacLeod: I appreciate the excitement of the witness. That said, the mandate of this committee is not the lawsuit by Ms. Wynne to myself and our leader, Mr. Hudak. The mandate of this committee—

Interjection.

Ms. Lisa MacLeod: I would like to allow the witness—I've never experienced where a witness has tried to cut off a member on a point of order.

The Chair (Mr. Shafiq Qaadri): Point of order, Ms. MacLeod. The floor is yours.

Ms. Lisa MacLeod: I think it is important that you reiterate to the witness what the mandate of this committee is, and that is the review of the matter of the Speaker's finding of a prima facie breach of privilege, with respect to the production of documents by the Minister of Energy and the Ontario Power Authority to the Standing Committee on Estimates and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

I would ask you, as Chair, to ensure that the witness, who is tending to veer off into other directions, focus himself and encourage his own sense of discipline to follow the committee's mandate. If he's not able to do that, perhaps he should just be quiet.

The Chair (Mr. Shafiq Qaadri): Two things: As Chair of the Standing Committee on Justice Policy, (a) I thank you for the reminder of the mandate; and (b) I would like, if possible, to remove a little bit of the nuclear-radiation-level hostility that seems to permeate this room so that we can return not only to the mandate but to parliamentary conduct. If I cannot get that, I will adjourn the committee. Period. So forewarned.

Mr. Singh, the time is yours.

Mr. Jagmeet Singh: Thank you. So we've heard—this is the allegation, and this, obviously, remains to be proven—but the concern that people have is that the government put its own political interests ahead of Ontarians' interests in the gas plant scandal. That's the allegation; that's what people are concerned with.

We're hearing that the same thing may have occurred in Windsor with respect to putting the political interests

ahead of Ontarians' interests. Can you speak to the fact that people might be wondering that it doesn't seem to be that the government has learned any lessons from this?

Hon. Glen R. Murray: I'm not sure what you're saying. This is another thing that causes me concern, because one of your colleagues—there is a note that was written by the deputy and by officials that very clearly said that there were no briefings of the minister. As a matter of fact, on that case, as a result of the review, I immediately started meeting with stakeholders about concerns, because this, in none of my briefings, was raised. When I started to hear from people outside of government that there were concerns, I immediately—once I secured that it was something more than simply gossip or rumours, because as anyone knows, you hear people complain about people who win, the people who lose contracts, that there was some merit to that—I immediately went to the deputy. The deputy told me very clearly—this was the first week of June—that she had heard no such thing and was not aware of any safety concerns at all. And I said to her, "I'm hearing something different. Can you please investigate?"

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In two weeks, she undertook an investigation. She briefed my staff on June 14 and me on June 19 to say that it wasn't conclusive; that there may be some validity to some of these concerns. On June 19, upon being told, I immediately halted, ceased the installation of girders and then quickly called an independent inquiry, because at that time, many senior officials and experts in the ministry—and the contractor—were saying there was no problem here.

As a matter of fact, as you may remember, we did not actually know there was a safety problem. I was not satisfied, as the minister, with the first round of evaluations because the testing was done by the project company. I said that was improper, in my mind—or insufficient, maybe, more than improper—and I ordered independent testing, which happened in August, as a result of a direct ministerial order to do the destructive testing.

When we opened up the sixth girder, that's when we discovered there was a safety problem, but that was three months of hard work. We didn't actually know and we had no evidence, but we immediately set in motion—and I think that is an example of exactly what we're talking about. That was the first time a minister in maybe 40 or 50 years has ever ordered an independent review to determine whether or not there was a safety issue. I'm very proud of that, but it was very hard. I've often said to people that I'm sure I would have faced criticism for the cost and expenditure if all six of those girders had come back fine, and I would be in the House, no doubt—and that was why I raised the issue about the integrity of our own process. When a minister gives an answer that is truthful and honest, backed up by bureaucrats, as we did with that note from the deputy that said, "I had no knowledge of it"—and she will testify to that, as will both deputies, because they had no knowledge of it and

there's a good paper trail there—I am continually challenged.

So if you want to criticize me and think that I didn't do my job there, then you should produce evidence. I found in the last month on two separate occasions, when I knew things to be explicitly true, backed up by evidence, there were colleagues of mine in the Legislature who continued to say the opposite, even when they were handed copies and transcripts that demonstrated that. That's a problem because I think we're called honourable members for that—

Mr. Jagmeet Singh: We'll get into that.

Hon. Glen R. Murray: And I think that has to do with the fundamental trust that we have in the committee process, because I have no appeal to courts. I have no appeal to the law and I have no legal protection. I don't even have the protection of the Charter of Rights—

Mr. Jagmeet Singh: Sure. You answered the question—

Hon. Glen R. Murray: I'm sorry for making a point of it, but I don't think you realize how vulnerable we are as ministers before these committees.

Mr. Jagmeet Singh: Thank you so much for answering the question.

I want to ask you, prior to 2013—since the privacy commissioner came in and talked about record-keeping, it's got a lot of attention now, but prior to 2013, were you aware of the Archives and Recordkeeping Act? Was that something that you were familiar with? Or were you, like us, drawn to its attention by the Information and Privacy Commissioner?

Hon. Glen R. Murray: In my ministry, because I've been a minister for most of my time, we have a legal unit. When I said that part of the reason I take almost all electronic material that comes in that is not transitory—and I put almost all of it into the hands of the responsible person, because then I know when it goes to correspondence, when it goes to legal, it immediately is under the hands and guidance of the law department in the unit, it is immediately under the hands of the correspondence unit that knows that.

While I have, I think, a very broad understanding of the archives and rules, and certainly my staff has been trained, I will never have the details particular to the ministry and to the sensitive issues of privacy like people's motor vehicles. I want to make sure that there's a competent professional who has been doing that for years—

Mr. Jagmeet Singh: Sure.

Hon. Glen R. Murray: So I have been doing that.

But, you know, the issues of sensitivity—we have privileges as members, but we also have vulnerabilities. I made a comment about I can't actually sue anyone. But people on this committee can exercise the same power over my life as a minister—and Minister Bentley and others have experienced this. I actually can't sue a member the way some people have been sued successfully for things they've said. So I don't have the dependence of character—and I think for many of us who appear before these committees, who are being very forthcoming, who

have given I don't know how many hundreds of thousands of pages of documents—and there's nothing I won't answer. I meet with many of your colleagues privately and work very hard with them, and expect that when yes is yes and no is no and it's backed up by evidence, that that's accepted and people do not knowingly misrepresent that, which I think has been happening too often lately.

Mr. Jagmeet Singh: That's fine. Thank you so much for that.

I just want to go back to Monique Smith and some of the questions I had around Monique Smith. She was obviously the lead of the transition team. You indicated that in terms of record-keeping problems that existed with the previous Premier, it would have been Monique Smith who would have been the person who was briefed on that. Do you understand that Monique Smith would have then communicated these issues around record-keeping to the Premier?

Hon. Glen R. Murray: I don't know; I really don't know. I know that most of what Monique did was logistical and management. You can imagine with a volunteer committee.

Mr. Jagmeet Singh: Sure.

Hon. Glen R. Murray: We didn't have the benefit yet, because the Premier was not the Premier, so we did not have the full resources of government there. It was basically a couple of people that the Premier—I don't understand the transition, but I think Peter Wallace could probably answer. There is some provision when a new Premier comes in. There are some resources available, but they're limited.

Mr. Jagmeet Singh: Sure.

Hon. Glen R. Murray: So Monique was really working organizationally. You have to remember that the big focus of this committee was to get ready for the 17th, for the House returning, and to integrate the leadership candidates' views of what was happening and to think about that. It did not write letters, it did not prepare documents, it didn't do any of that. There were minutes taken, I think, of some of the ideas, but they were just lists of the ideas and how things worked.

Mr. Jagmeet Singh: You indicated just before my previous round of questioning that you assumed that Monique Smith would have given advice to the Premier. Just to be very accurate, you didn't say that you knew for sure. You assumed—

Hon. Glen R. Murray: I have no idea. I would not know that because I was not in any of those meetings.

Mr. Jagmeet Singh: Do you know if anyone, with certainty, provided—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Jagmeet Singh: —information or updates around the record-keeping and the lack of record-keeping with Premier McGuinty to Premier Wynne?

Hon. Glen R. Murray: Well, previously to the events that this committee is looking at, record-keeping was pretty routine. I mean, I never as a minister in any of my ministries had any issues come up with record-keeping. I

actually found the government systems pretty reliable, and the information I was given about what to do was pretty straightforward. Now we have much more active training, much more specific direction. The Premier, when she came in, said that she wanted to raise the bar on the level of accountability and authority, so I as a minister undertake a lot more scrutiny of files systemically in a way that I have to report in regularly on, so all of these training systems that are in place are part of that more aggressive approach. And, to be quite frank, the Premier did this before we had the issue of the deletion, so when these instructions were being given, it was prior to the stories of the deletions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. I do thank colleagues for the return of peace in our time. I just want to inform committee members that according to standing order 16, the Chair is able to suspend committee hearings at an indefinite period for what is termed "grave disorder," and so, essentially, I could pro-rogue the committee, if necessary.

Having said that, I now return, for the final 10 minutes, to Mr. Delaney.

Mr. Bob Delaney: Thank you, Chair. I, in my time as a committee Chair, remember similar briefings.

Minister Murray, 130 hours of testimony, either 89 or 90 witnesses—we're not exactly sure—close on half a million documents to date. Any closing thoughts?

Hon. Glen R. Murray: And an Auditor General's report and now a police investigation. I mean, at what point is this an actual inquiry? What is left to know, what is our job to do it, and at what point do we let the police do their job?

There's also people's reputations. I've been in private and public life for 30-plus years. When I make mistakes in the House, I try to apologize for them, and that's a good thing to do. But there is a committee process here, and we have the same authority as a court of law, and the least protected people are our own colleagues when they appear here, because there isn't an appeal, and, as was pointed out by some of you in the House, the actions a parliamentary committee can take are equivalent to a court. You could disbar a lawyer. You could effectively cause penalties and harm to people's careers and reputation. I just want to tell you, Mr. Chairperson, I have been concerned increasingly about that, as I think people want to come here without fear that their reputations would be damaged and the natural justice process is there.

I think there's a lot of information here. I mean, 89 witnesses—I don't know how many more you're going to hear from. I'm not sure I was particularly useful today, because I'm not sure what I have to tell you that's helpful. And dragging a whole bunch more people in here—I think you've invited the entire transition committee—I'm going to suggest to you that there wasn't much there. As a matter of fact, I don't think I even heard the words "gas plant" in any kind of context that would be relevant to this committee.

My concern is, the official opposition is proposing to cancel 142 kilometres of rapid transit tracks. They're

proposing to cancel a whole bunch of green energy projects. There's going to be costs associated with that. If there's been any lesson to do that, it's that politicians and their election teams should be very careful during election campaigns about what they commit and understanding the consequences.

I can tell you, as Minister of Transportation, that what the Conservatives are proposing is a nightmare of lawsuits and throwaway costs, and they only have to look to the Eglinton Crosstown line and a quarter of a billion dollars to understand what that means. That was a project in early-stage development. The 142 kilometres of rapid transit projects that they're proposing to cancel are going to make anything like a gas plant issue look like a minor footnote in history, because the legal ramifications of a \$5-billion Eglinton project being cancelled at this point, again, are a nightmare. They cancelled three of them last time and they're now committing to cancel them again.

So I would ask, what is going on in the Tory caucus and in their transition team—because I know they're already measuring the drapes—as to what preparation they're having to manage the cancellation of those plants—the things they want to cancel. Because I don't think they've learned anything.

I'll leave it at that. Thank you, Mr. Chairman.

Mr. Bob Delaney: Thank you very much, Minister Glen Murray. Chair, we're done.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney, and thank you, Minister Murray, for your presentation and presence. You are officially dismissed.

The committee does have a motion before the floor. Mr. Tabuns, I'd invite you to present it, please.

Mr. Peter Tabuns: Mr. Singh will be.

The Chair (Mr. Shafiq Qaadri): Mr. Singh. Sorry.

Mr. Jagmeet Singh: I'll be moving the motion. I move that when a witness slot is left vacant, starting when this motion passes, the Standing Committee on Justice Policy begin report writing in open session.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any comments before we move to the vote on this motion? Seeing none, all in favour of the motion?

Mr. Bob Delaney: Hold on.

The Chair (Mr. Shafiq Qaadri): Sorry. All right. Mr. Delaney, comments?

Mr. Bob Delaney: Chair, a brief recess—10 minutes.

The Chair (Mr. Shafiq Qaadri): A 10-minute recess. We're coming up to question period, so just be aware.

The committee recessed from 1001 to 1008.

The Chair (Mr. Shafiq Qaadri): The committee is back in session. We have a motion before the floor. Are there any further comments on the motion? Seeing none, we'll proceed to the vote. All in favour of the motion—

Mr. Peter Tabuns: Recorded.

The Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

Singh, Tabuns.

Nays

Delaney, Del Duca, MacLeod, McNeely, Thompson.

The Chair (Mr. Shafiq Qaadri): Calculating roughly, I believe that the motion does not pass.

Is there any further business before this committee? The committee is adjourned. Thank you.

The committee adjourned at 1009.

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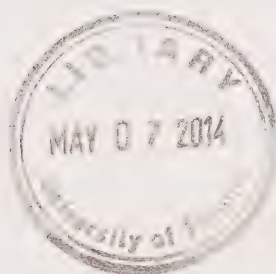
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Standing Committee on Justice Policy

Members' privileges

Comité permanent de la justice

Privilèges des députés



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 30 April 2014

Mercredi 30 avril 2014

*The committee met at 1404 in committee room 2.*MEMBERS' PRIVILEGES
MR. JASON LAGERQUIST

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, Jason Lagerquist, policy adviser of the office of Ministry of Agriculture and Food.

Mr. Lagerquist, you will be affirmed by our very able Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Jason Lagerquist: I do.

The Chair (Mr. Shafiq Qaadri): Welcome. Your five-minute opening address begins now.

Mr. Jason Lagerquist: Good afternoon, Chair, members of the committee. My name is Jason Lagerquist, and I currently work as a policy adviser to Premier Kathleen Wynne in her capacity as Minister of Agriculture and Food.

I thought it would be helpful to the committee to first provide a brief history of my employment at Queen's Park. This past Monday, April 28, marked six years since I began work here as a staff member. I began working in MPP Amrit Mangat's office as her legislative assistant, a role I served in for approximately 10 months before I accepted a position to work in the office of the Minister of Health and Long-Term Care. I served as special assistant to Ministers Caplan and Matthews for a total of three years, where I performed a variety of roles, most recently as one of the MPP liaisons.

In February 2012, I accepted a position in then-Premier Dalton McGuinty's office in the operations department, reporting directly to deputy chief of staff Dave Gene. My position in the Premier's office was northern regional desk. My responsibilities included working with northern MPPs on identified priority issues, facilitating communication materials and information between their offices and various ministers' offices, tracking northern media coverage and identifying communications opportunities as they presented themselves, working with staff in various ministers' offices to co-

ordinate announcements in northern Ontario, and working with others in the Premier's office in coordinating the Premier's visits to the north.

In February 2013, I accepted my current position as a policy adviser to the Minister of Agriculture and Food. I'd also like to mention that between 2006 and 2007, prior to officially coming to Queen's Park to work as a staff member, I was a member of the Ontario Legislature Internship Programme, where I served as a legislative intern to MPPs Jim Wilson and Dave Levac. My first exposure to provincial politics was actually as an OLIP intern in MPP Wilson's office.

I mention this because I think it was in part my experience in OLIP and later on as a staffer that allowed me to gain a deep understanding and respect for public service, the role of MPPs and the privilege that it is to serve an MPP. I know how hard MPPs and their staff work and the tremendous sacrifices they all make. This is irrespective of political affiliation. I also understand the importance of committees and the role they play, so I'm happy to be here to help answer any questions you might have of me today.

I would also like to take a moment to address the happenings of February 7, 2013, as I believe this will be of particular interest to this committee. At some point between late January and early February of 2013, I was notified by my boss, Dave Gene, that someone would be accessing my computer in preparation for the transition from one Premier to the next. On the morning of the 7th, I was approached by an individual, whom I later believed was Peter Faist, who identified himself as the person who would be working on my machine. I had not previously met Mr. Faist, nor have I seen him again since. I allowed him to access my computer and left the room. Mr. Faist was no longer there when I returned a short time later.

When I attempted to log back onto my computer, I was met with what I recall as a black screen with a white, blinking cursor. I was unable to log back onto my computer as normal, at which point I called Thom Stenson, an IT manager in Cabinet Office, for his assistance. After a short examination of my computer, I recall Mr. Stenson expressing frustration and putting forth his belief that it was Laura Miller's partner who had accessed my computer and computers assigned to others in the Premier's office. After spending some time working on my computer, Mr. Stenson was able to restore it to what I considered to be its normal working condition.

I have no recollection of any emails or information being missing, and I have no recollection of experiencing any difficulties with the general operation of my machine once Mr. Stenson was able to log me back on. I also feel that it is relevant to tell the committee that at no point in time did I ever have anything on my computer, including emails, briefing documents etc., that in any way related to the decision to relocate gas plants in Oakville or Mississauga, nor have I had any discussions with any of my colleagues or superiors about that particular issue.

I suspect that the members of the committee will want to discuss these and other matters with me in greater detail, and I am happy to assist you in answering any questions you might have.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Mr. Lagerquist.

Good afternoon, Mr. Hatfield. The floor is yours.

Mr. Percy Hatfield: Good afternoon, Chair. I'm new to this committee. Do you have a sense of humour?

Mr. Jason Lagerquist: Yeah.

Mr. Percy Hatfield: I'm glad to hear it.

The Chair (Mr. Shafiq Qaadri): Mr. Hatfield, that is not a requirement in public service.

Mr. Percy Hatfield: I say that, Chair, because February 7 was my birthday, and I know what I was doing. Now I've heard what you were doing.

When Mr. Faist came to your office, did somebody bring him in and introduce you to him, or was he on his own?

Mr. Jason Lagerquist: He was already inside my office, and he was on his own.

Mr. Percy Hatfield: My buddy Dave Gene from Windsor, Ontario, Canada, didn't make an introduction?

Mr. Jason Lagerquist: Not to me. No.

Mr. Percy Hatfield: Did you see him talking to anybody else in the office?

Mr. Jason Lagerquist: Not that I recall. No.

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Mr. Percy Hatfield: Did anyone in the office seem to know him? He just wandered in off the street?

Mr. Jason Lagerquist: He didn't wander in off the street. In order to access our office on the second floor of the legislative building, which is where we were at the time, there was a door with a keypad and you had to access a code. He would have either had to have known the code or be granted access by somebody.

Mr. Percy Hatfield: So you don't know if somebody, besides giving him access to the building, gave him access to the code on the door to get in to say hello to you and take over your computer.

Mr. Jason Lagerquist: I don't know how he accessed the room.

Mr. Percy Hatfield: All right. What did he say to you when he came over?

Mr. Jason Lagerquist: He just identified himself as the individual who had been brought in to access my computer in preparation for the transition.

Mr. Percy Hatfield: So you had no reason to suspect that he was anybody else.

Mr. Jason Lagerquist: No.

Mr. Percy Hatfield: He was just the guy. Right? Did he explain to you what he was going to do, like, "Get out of here. Come back in 10 minutes" or anything? What did he say?

Mr. Jason Lagerquist: No, he didn't explain what he was going to do. We really didn't talk much at all. He just identified himself as the person who would be working on my machine, and I vacated the office.

Mr. Percy Hatfield: Did he tell you who had asked him to come in and work on your machine?

Mr. Jason Lagerquist: He didn't say that, no.

Mr. Percy Hatfield: Were you prepped for this testimony in any way? At the end of your opening statement, you said something like, "At no time did I speak to any other colleagues." Did a lawyer or somebody elsewhere tell you what to say and how to piece that little statement together?

Mr. Jason Lagerquist: No, nobody has told me what to say. I wrote the statement myself. I have met with officials from the government House leader's office in preparation, more about the committee structure and how committees function. This is the first time I've had the pleasure of appearing before a committee. But no, nobody crafted my statement for me. I wrote it.

Mr. Percy Hatfield: You wrote it yourself.

Mr. Jason Lagerquist: Yes.

Mr. Percy Hatfield: When he was done working on your computer, did he—I'm sorry; were you there then? Or you had left the room and came back later, and he was gone?

Mr. Jason Lagerquist: That's correct, yes.

Mr. Percy Hatfield: So you don't know what he did next.

Mr. Jason Lagerquist: No, I don't.

Mr. Percy Hatfield: When the IT guy came in—what was his name? Stenson?

Mr. Jason Lagerquist: Yes.

Mr. Percy Hatfield: What was the level of his frustration? You indicated that he was frustrated that Laura Miller's boyfriend had been screwing up his computers. I don't know that you said those words, but he was frustrated. Right? How frustrated was he?

Mr. Jason Lagerquist: I don't know how I would gauge his level of frustration. He was definitely frustrated. It wasn't the first—or my impression, based on the conversation, was that mine was not the first computer that he had been asked to come to help with.

Mr. Percy Hatfield: Did my buddy Dave Gene from Windsor, Ontario, Canada, tell you that he was Laura Miller's boyfriend?

Mr. Jason Lagerquist: I don't recall that conversation taking place with Dave. To the best of my recollection, what Dave said was that someone would be coming in over the next little while to access our computers in preparation for the transition. I don't remember him identifying who that person was.

Mr. Percy Hatfield: Did you talk to your colleague Lauren—is it Ramey?

Mr. Jason Lagerquist: Ramey.

Mr. Percy Hatfield: Did you talk to Lauren about this?

Mr. Jason Lagerquist: I spoke to Lauren a few days after the ITO became public. Lauren and I have been friends for a number of years, and it was an interesting experience for, I think, both of us to see our names in the newspaper and to see our pictures in the newspaper. Lauren and I spoke very briefly, not about any details with respect to what had happened, but more about the general experience and what we were both going through.

Mr. Percy Hatfield: Chair, I have a final question, and then my colleague will take over, if that's okay.

The Chair (Mr. Shafiq Qaadri): Absolutely. You have 16 minutes in total. The floor is yours.

Mr. Percy Hatfield: Thank you. After all these things happened with your computer, you talked to Lauren. Who else did you have a conversation with about the day's events?

Mr. Jason Lagerquist: I don't recall speaking to anyone about it.

Mr. Percy Hatfield: At any time since then have you had discussions with former colleagues?

Mr. Jason Lagerquist: Not in any great detail. When I was first notified or first contacted by the Ontario Provincial Police that they wanted to speak to me about this, I acquired legal counsel, and counsel advised me that it was in the interest of the investigation not to speak directly with anyone about it.

Mr. Percy Hatfield: Thank you for your time. Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hatfield. To Mr. Tabuns.

Mr. Peter Tabuns: Mr. Lagerquist, you talked to Thom Stenson about this matter. Can you tell us about that discussion?

Mr. Jason Lagerquist: It was very brief, and I don't recall him going into any detail in terms of the technicalities with respect to what had happened. He was just frustrated—or he seemed frustrated—that he was being called to work on computers that had been accessed by, as he put it, Laura Miller's partner.

Mr. Peter Tabuns: After Peter Faist had accessed your computer, can you describe again what happened? It was non-functional?

Mr. Jason Lagerquist: As I said in my opening statement, when I returned to my office, Mr. Faist was no longer there. I attempted to access my computer again. I remember a black screen and a white, blinking cursor. I was unable to log on to my computer as would be normal, and that's when I called Mr. Stenson for assistance.

Mr. Peter Tabuns: I apologize if this question has been asked of you before, but why did you think that Mr. Faist wasn't a technician for the Ontario public service?

Mr. Jason Lagerquist: Sorry. Can you repeat the question?

Mr. Peter Tabuns: In the ITO, it is noted that you didn't think that he was a technician for the Ontario public service.

Mr. Jason Lagerquist: That was, I think, based upon the comments that Mr. Stenson made to me.

Mr. Peter Tabuns: Okay. So you didn't think that the moment that he came to your desk.

Mr. Jason Lagerquist: I didn't know. I'd never met him before.

Mr. Peter Tabuns: Okay. And the comments of Mr. Stenson were that this person was someone who wasn't working in the IT department.

Mr. Jason Lagerquist: That was what I took from it, yes.

Mr. Peter Tabuns: Were you aware that Rolf Gitt checked the logs to look at who had accessed it?

Mr. Jason Lagerquist: No.

Mr. Peter Tabuns: Were there any other times that you saw Peter Faist in the office?

Mr. Jason Lagerquist: No. That was the one and only time, that day.

Mr. Peter Tabuns: Did you see him accessing other people's computers that day?

Mr. Jason Lagerquist: I don't recall seeing him access anyone else's computer, no.

Mr. Peter Tabuns: Was it your discussion with Thom Stenson that identified for you that he was in a relationship with Laura Miller?

Mr. Jason Lagerquist: Yes.

Mr. Peter Tabuns: Did you often work with Laura Miller?

Mr. Jason Lagerquist: No, not particularly. Laura and I worked together on a very small handful of files. She was more on the communication side of things, and I was in the operations department.

Mr. Peter Tabuns: Was she a person who got tough assignments given to her?

Mr. Jason Lagerquist: I'm not comfortable speculating on the nature of her assignments. I know Laura was a hard worker and very well regarded.

Mr. Peter Tabuns: Okay. One of the things that concerned us about her approach was that, in going through emails, it looked to us as though she wanted to put pressure on or even bully the Speaker, Dave Levac, around his ruling. Was that a standard operational thing for her?

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, just with respect, as you know, the idea of the Speaker's influence is not material and has been ruled on by the Chair etc. Bring it back to the scope, please. Go ahead.

Mr. Peter Tabuns: Well, I'm trying to go to the nature of a person's operating style. I'm not asking questions about what was said to the Speaker at any point.

Mr. Jason Lagerquist: Sorry. Can you repeat the question?

Mr. Peter Tabuns: Was the application of pressure on people part of her operating style?

Mr. Jason Lagerquist: I wouldn't describe it as such. I never experienced pressure.

Mr. Peter Tabuns: Did you observe it being applied to others?

Mr. Jason Lagerquist: No, I wouldn't say that I observed it.

Mr. Peter Tabuns: Okay. Where was your computer located in the office?

Mr. Jason Lagerquist: It was in the second floor of the main legislative building. I can't remember the exact number.

Mr. Peter Tabuns: That's okay. So were you in your own office with a separate door? Were you in a cubicle? Were you in an open space?

Mr. Jason Lagerquist: The way the office was structured, when you first came in the main door to my office, there was a couple of desks and then a doorway that led to another office that led to a single desk and then another small hallway that led to another series of desks.

Mr. Peter Tabuns: So you were in the middle of all of this? Or were you in a separate space from anyone else's computer or workstation?

Mr. Jason Lagerquist: There would have been one other workstation in the room where I was.

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Mr. Peter Tabuns: Do you believe that others saw Peter Faist working on your computer?

Mr. Jason Lagerquist: On my computer?

Mr. Peter Tabuns: Yes.

Mr. Jason Lagerquist: I can't speculate as to what other people may have seen.

Mr. Peter Tabuns: Was there anyone else in the room that day?

Mr. Jason Lagerquist: No, not that I recall.

Mr. Peter Tabuns: When you were engaged in your discussion with the police, where did the discussion take place?

Mr. Jason Lagerquist: The discussion took place at the office of legal counsel.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, once again: You're aware that the subject of the OPP investigation is not material to this committee. But please, continue.

Mr. Peter Tabuns: Thank you, Chair. Did you tell your managers that you were being interviewed?

Mr. Jason Lagerquist: I told my chief of staff in the agriculture and food minister's office.

Mr. Peter Tabuns: And who was that chief of staff again?

Mr. Jason Lagerquist: His name was Michael Keegan.

Mr. Peter Tabuns: Michael Keegan. Okay. And can you tell us where you work now?

Mr. Jason Lagerquist: I continue to work in the office of the Minister of Agriculture and Food.

Mr. Peter Tabuns: And your minister is?

Mr. Jason Lagerquist: Kathleen Wynne.

Mr. Peter Tabuns: Before your name appeared in the ITO, did anyone ask you about Peter Faist or about wiping of computer records?

Mr. Jason Lagerquist: No.

Mr. Peter Tabuns: It didn't come up at all in any of the discussions in your office?

Mr. Jason Lagerquist: There might have been a couple of discussions in the days immediately afterwards,

just that it was Peter who had access to computers, but they didn't go into any detail.

Mr. Peter Tabuns: So no one from the Premier's office ever came to see you about computers having their hard drives wiped clean?

Mr. Jason Lagerquist: The current Premier's office?

Mr. Peter Tabuns: Yes.

Mr. Jason Lagerquist: No.

Mr. Peter Tabuns: And no one from the previous Premier's office?

Mr. Jason Lagerquist: No.

Mr. Peter Tabuns: Okay. And this happened on or about February 7, and from that date forward until the police came to see you, no one discussed this matter with you? No one inquired?

Mr. Jason Lagerquist: That's correct.

Mr. Peter Tabuns: All right. After the ITO was released, have you discussed the fact that your name was in the ITO with any of your colleagues? Any of your supervisors?

Mr. Jason Lagerquist: Once it reached the public domain, people were asking me frequently.

Mr. Peter Tabuns: And did you engage in discussions with supervisors at that time?

Mr. Jason Lagerquist: Not about any specifics in terms of what happened that day.

Mr. Peter Tabuns: If it wasn't about specifics about what happened that day, what was it about?

Mr. Jason Lagerquist: Just about—

Mr. Bob Delaney: Point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns—Mr. Delaney, if you'll allow, I'll anticipate your point of order.

As has been mentioned, Mr. Tabuns—with respect, repeatedly—the ITO, the OPP etc. is getting into a forbidden zone. But, in any case, the floor is yours.

Mr. Peter Tabuns: May I say, Mr. Chair—if you'd stop the clock for a second, because you're speaking to a point of order—I'm not asking about what he said to the police. I'm asking about the reality after this became a public matter—what sort of discussions went on. I have no interest in probing—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Give us a moment.

With due respect to your inquiry about reality, it's not material, so I'd invite you to please continue.

Mr. Peter Tabuns: I suspect that at some point, Chair, it may become highly material, but—

Interjections.

The Chair (Mr. Shafiq Qaadri): We're fine.

Mr. Peter Tabuns: Let's just establish, then: Prior to the ITO coming out, no one made any inquiries of you.

Mr. Jason Lagerquist: No.

Mr. Peter Tabuns: And this was after the IT department was aware that someone had come and wiped your computer, and had had to restore it. Is that correct?

Mr. Jason Lagerquist: No, I don't recall anyone making any inquiries of me.

Mr. Peter Tabuns: Not a single person?

Mr. Jason Lagerquist: No.

Mr. Peter Tabuns: Okay. Minister Milloy said that the Liberal Party of Ontario conducted an internal investigation into Peter Faist, but they wouldn't allow the results to be made public. Were you asked any questions in the course of that investigation?

Mr. Bob Delaney: Chair, I don't know what that has to do with the subject of this inquiry.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney: A point of order. I'll have to consider this.

Mr. Tabuns, please continue. We'll allow the question for now, but we are listening intently. Go ahead.

Mr. Peter Tabuns: As am I.

Mr. Jason Lagerquist: Sorry. Could you repeat the question for me?

Mr. Peter Tabuns: Yes. We've been told by Minister Milloy that the Liberal Party conducted an internal investigation into Peter Faist. Did anyone from the Ontario Liberal Party come to talk to you about Peter Faist?

Mr. Jason Lagerquist: No, they did not.

Mr. Peter Tabuns: Okay. Have you had any other debriefs about him and his performance or his behaviour with regard to this matter?

Mr. Jason Lagerquist: What do you mean by debrief?

Mr. Peter Tabuns: Have you been approached by any other official on this matter?

Mr. Jason Lagerquist: No, I have not.

Mr. Peter Tabuns: Okay. Was there anyone that you spoke to in preparation for today's appearance?

Mr. Jason Lagerquist: Yes. As I indicated earlier, I spoke to folks in the government House leader's office to go over the committee structure and how committees work. I mentioned earlier that this is the first time that I've appeared before a committee. That's who I spoke to, yes.

Mr. Peter Tabuns: How much time do I have left?

The Chair (Mr. Shafiq Qaadri): About four minutes, Mr. Tabuns.

Mr. Peter Tabuns: Mr. Lagerquist, prior to your computer being wiped, did you have any involvement whatsoever with the gas plants file?

Mr. Jason Lagerquist: No, absolutely not. As I said in my opening statement, at no point in my time in the Premier's office, or before, for that matter, did I have any involvement with decisions relating to gas plant relocations. I at no point had any emails on my computer, briefing documents or anything related to that file.

Mr. Peter Tabuns: And had you done any extensive work with the former chief of staff?

Mr. Jason Lagerquist: Which chief of staff?

Mr. Peter Tabuns: Mr. Livingston.

Mr. Jason Lagerquist: No, no extensive work. I met Mr. Livingston once briefly, I recall. It was a very short conversation. I remember he asked me what I did. I told him, and he thanked me for my hard work and that was it. So, no, I have not spoken with David Livingston about that.

Mr. Peter Tabuns: My colleague may have a few questions.

The Chair (Mr. Shafiq Qaadri): Mr. Hatfield.

Mr. Percy Hatfield: Thank you, Chair. Good afternoon again. Sir, in your work, prior to your computer being wiped, were you ever working on any sensitive files of any kind that may have proved embarrassing to an incoming Premier of the same party as opposed to the former boss that was there?

Mr. Jason Lagerquist: No. There's nothing that I can recall that I ever would have had on my computer that would have shown to be embarrassing, to the best of my recollection.

Mr. Percy Hatfield: I guess I'm somewhat befuddled, in the sense that you're not, with all due respect—you weren't that high up in the food chain in the office.

Mr. Jason Lagerquist: That's correct.

Mr. Percy Hatfield: And I don't mean that with any disrespect. I really don't.

Mr. Jason Lagerquist: None taken.

Mr. Percy Hatfield: I'm just trying to figure out why they would want to wipe your computer when someone from the same party is taking over, but they should all be on the same page. I just don't get it.

Mr. Jason Lagerquist: As best as I can recollect, it was described as a normal part of the transition process.

Mr. Percy Hatfield: And Mr. Gene told you that?

Mr. Jason Lagerquist: Yes.

Mr. Percy Hatfield: You had no reason to doubt his word?

Mr. Jason Lagerquist: No.

Mr. Percy Hatfield: He's your boss. Was there anyone else with Mr. Gene when he approached you about this and what was going to happen? Did he have an office meeting and tell everybody or did he go individually?

Mr. Jason Lagerquist: No. I don't think it was an office meeting. I think there was—

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Jason Lagerquist: As best as I can recall, keeping in mind that this happened well over a year ago now, I believe it was in the context of a discussion that took place between a few individuals, including myself and Mr. Gene.

Mr. Peter Tabuns: So there were others there at the time when he said, "This is what we're going to do"?

Mr. Jason Lagerquist: That's my recollection, yes.

Mr. Percy Hatfield: As I recall, you've given testimony this afternoon that you had not seen Peter Faist before and you haven't seen him since?

Mr. Jason Lagerquist: That's correct.

Mr. Percy Hatfield: Ever visit Vancouver?

Mr. Jason Lagerquist: Pardon me?

Mr. Percy Hatfield: I'm kidding. No, I'm sorry. Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Thanks to you, Mr. Hatfield and Mr. Tabuns. I appreciate your abiding by the various rulings that we're hurling at you. It's the Chair's aspiration that he'll get similar co-operation in subsequent testimony.

To the government side: Mr. Delaney.

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Mr. Bob Delaney: Thank you, Chair. I will be sharing this time with my colleague Mr. Del Duca.

I think, before we begin, there was mention of an “internal investigation,” and it would be worth clarifying again on the record here that this “internal investigation”—its scope was entirely to determine if there was any contractual relationship between Mr. Faist and either the government or the Liberal caucus, and it would be worth noting that Mr. Milloy, the House leader, did state this in the House.

I believe Mr. Del Duca will pick it up from here.

Mr. Steven Del Duca: Thank you for being with us here today, Jason. In my first couple of questions, I may go over a tiny bit of territory that you may have already referenced in your opening statement, or you may have in the course of responding to members from the NDP caucus.

As we know from the ITO and also from what we’ve heard by your testimony today, your computer was one of the so-called 24 that were accessed, and as a result of that, the OPP requested an interview with you. Is that correct?

Mr. Jason Lagerquist: That is correct.

Mr. Steven Del Duca: And when you received the request from the OPP, did you agree to speak with them?

Mr. Jason Lagerquist: I did.

Mr. Steven Del Duca: And when you did speak with the OPP, did you answer their questions honestly, and did you provide them with all of the relevant information that you knew at the time?

Mr. Jason Lagerquist: I did.

Mr. Peter Tabuns: Point of order.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, point of order.

Mr. Peter Tabuns: When I ask about the OPP, I get told I am getting in deep water—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. You are absolutely right. Your point of order is well taken, and I will now have to advise my honourable colleague to please observe the mandate, subject to further reprimand.

Mr. Steven Del Duca: Thank you for that advice, Mr. Chair.

I will move on to discuss record-keeping. I do want to ask you a few questions about this topic of record-keeping. Were you ever directed by any of your chiefs of staff or other colleagues to delete all of your emails?

Mr. Jason Lagerquist: No.

Mr. Steven Del Duca: Okay. When former Premier McGuinty testified here at committee, he agreed that there had been a lack of adequate training for staff in this particular area. Specifically, in his June 7 response to the IPC’s report, he stated:

“I agree with the commissioner that despite some efforts, we did not devote adequate resources and attention to ensuring all government staff in all ministries and in the Premier’s office were fully informed of their responsibilities. This inadequate training made it difficult

for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated.”

Would you agree with the former Premier that there was a lack of formal training with respect to how to properly manage such records?

Mr. Jason Lagerquist: Yes, I would certainly agree that the level of understanding in terms of record-keeping—what we as political staff are required to keep and what is permissible to be deleted was not as clear at that time as it is now.

Mr. Steven Del Duca: Thank you for that answer. That being said, I’m sure it was probably apparent to most staff that they were not required to keep every single record, and as I’m sure you’re aware, our government has taken a number of initiatives to improve the system and to ensure that all staff are better trained regarding record-keeping and document retention practices.

The Archives and Recordkeeping Act explains, for example, that transitory records are not required to be kept, and the common record series defines these records as “records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record.”

So, according to the act, there are many types of records that would fall into this transitory category: for example, duplicates, records of short-term value, intermediate records and draft documents. Archives Ontario, in fact, even has a factsheet entitled *The Fine Art of Destruction: Weeding Out Transitory Records*.

Did you participate in the mandatory staff training that took place this past fall regarding records retention?

Mr. Jason Lagerquist: Yes, I did.

Mr. Steven Del Duca: Would you say that you now have a better understanding, because of that training, with respect to the record retention requirements, since the training?

Mr. Jason Lagerquist: Absolutely, I would say I do.

Mr. Steven Del Duca: I want to take a moment to move on and discuss a little bit of the impact of the changes that have been implemented under Premier Wynne.

The release of the Information and Privacy Commissioner’s report has prompted some significant changes across government—the IPC’s report, this summer, on document retention practices by the government, another item the Premier moved quickly to lead the way on. For example, she specifically gave direction to all political staff on the need to be responsible and diligent regarding retaining documents pertaining to government business and ensured the new training processes we mentioned a second ago were put into place.

As I’m sure you’re aware, our government has implemented the mandatory record-keeping rules. We talked about this a second ago. Can you talk to us a little bit

more about what that training has meant to you? You've been here for a little while. You mentioned in your opening you've been here for six years. Can you talk about what that difference in the training has meant to you?

Mr. Jason Lagerquist: I think it's absolutely led to an increased level of understanding in terms of the types of records that we are required to keep and the types of records that are permissible to be deleted. The difference between permanent records—those would be, for example, emails directing government policy, directing operations, those types of things. It's very clear now those are the types of things that should be kept, whereas other transitory records—I'm trying to think of an example of a transitory record. In OMAF, for example, we get dozens of emails a day that are a synopsis of various media stories. There's no government direction in something like that. That's just an update to staff as to what's going on in the press. I think that would be a pretty clear example of a transitory record that could be deleted.

Mr. Steven Del Duca: Thanks very much for that answer. Is there anything else you'd like to add in this first round of questioning?

Mr. Jason Lagerquist: No, I'm good.

Mr. Steven Del Duca: Okay. Thanks, Chair.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Del Duca. To the PC side: Ms. Thompson.

Ms. Lisa M. Thompson: Welcome today.

Mr. Jason Lagerquist: Thank you.

Ms. Lisa M. Thompson: Jason, I'd like to start out by going back to your various roles that you've had over those six years. It's six years you've been with government now?

Mr. Jason Lagerquist: As of Monday, yes.

Ms. Lisa M. Thompson: As of Monday. Very good. In your opening statement, you went through the different roles that you had to where you find yourself currently in a position—policy and stakeholder adviser with the Ministry of Agriculture and Food. What is it that you do in those particular roles now?

Mr. Jason Lagerquist: Currently, you mean?

Ms. Lisa M. Thompson: Currently.

Mr. Jason Lagerquist: Currently, I advise the Minister of Agriculture and Food on policy related to her ministerial portfolio, maintain relationships with agri-food stakeholders, leadership within those groups. I write briefing notes for the Premier when she attends—for the minister, excuse me—events related to the agri-food portfolio, review correspondence that comes in to OMAF, to our office, and direct responses, those types of things.

Ms. Lisa M. Thompson: Where do you spend most of your time—here in Toronto or on Stone Road?

Mr. Jason Lagerquist: I would say I spend most of my time in Toronto, particularly when the Legislature's sitting. I do try to make it to the office in Stone Road as much as possible. It's actually a little bit shorter commute for me to drive out to Guelph. So whenever possible, I do try to make it to the OMAF office.

Ms. Lisa M. Thompson: Okay. Very good. What in your previous experience would cause people to take a look at you to say, "Hey, you know what? When it comes to agriculture and food, Jason's our guy to work in policy and stakeholder relations"?

Mr. Jason Lagerquist: I don't think it was so much my direct experience in the agri-food sector. I think it was the experience that I built up over the years at Queen's Park and my ability to work with stakeholders.

Ms. Lisa M. Thompson: Okay. Fair enough. I apologize in advance if I ask questions that have already been asked, but—

Mr. Jason Lagerquist: No, that's fine.

Ms. Lisa M. Thompson: —we'll work through this. The ITO mentioned that your computer was one of the 24 accessed by Peter Faist. When did you first realize, "Hey, what the heck has this guy done to my computer?"

Mr. Jason Lagerquist: When I first returned to the office and I was unable to log on as I was accustomed to doing. Even at that point, I didn't really have a sense that anything was dramatically wrong. It was during my conversation with Thom Stenson where it became apparent—I just sensed his frustration. I sensed that there was something out of the ordinary.

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Ms. Lisa M. Thompson: There was something out of the ordinary then. Okay. When you first came in and your screen had gone to black, what was your natural instinct? What was your gut instinct? What did you do right away?

Mr. Jason Lagerquist: I did not think that there was anything significantly wrong. I played with the keyboard a little bit to try to see if I could—to try to get it to work on my own. My computer literacy is basically non-existent. So even when I called Mr. Stenson, I did not think that there was anything significantly wrong with my computer. And to be fair, after Mr. Stenson allowed me to regain access to my computer, I didn't experience any—it was business as usual in terms of the operation of the machine.

Ms. Lisa M. Thompson: But you didn't go, "Who the heck was that stranger working on my computer, and why was my screen black?" You didn't look where he went or if he was still in the area?

Mr. Jason Lagerquist: No, I did not.

Ms. Lisa M. Thompson: Interesting. Okay. Interesting.

Moving along. Your previous record of employment states that you worked for the Ministry of Health and Long-Term Care and specifically for Minister Matthews, who was also Kathleen Wynne's chair—campaign manager. So, given Minister Matthews's relationship with Kathleen Wynne at that time, did you inadvertently do any work on Kathleen Wynne's leadership campaign?

Mr. Jason Lagerquist: I appreciate the question, because I think it gives me the opportunity to be clear. After Premier McGuinty announced his resignation, those of us that stayed in the Premier's office were required to remain neutral throughout the leadership pro-

cess. There are some folks that took a leave of absence and worked actively on the various campaigns that were going on. But those of us, like myself, that were in the Premier's office were neutral.

Ms. Lisa M. Thompson: Okay, so you were neutral.

Mr. Jason Lagerquist: Correct.

Ms. Lisa M. Thompson: But then, with respect to your work with Minister Matthews, did you work on any campaign correspondence or manage her schedule or anything like that? Just to go cycle back around.

Mr. Jason Lagerquist: Can you clarify?

Ms. Lisa M. Thompson: So we talked about the Premier and now we're talking about Minister Matthews. Did you work on her schedule at all or anything like that?

Mr. Jason Lagerquist: When I worked in her office?

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order.

Mr. Bob Delaney: I believe this isn't even remotely close to the scope of the committee's mandate.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. We tend to agree with you. The point is mostly well taken. There's sort of a fine line between probing background responsibilities and so on, but at least if it could be made relevant to the mandate of the committee.

Please, Ms. Thompson, continue.

Ms. Lisa M. Thompson: Sure. Okay, that's fine. Let's go back to the day that you found your computer with a black screen. Aside from Thom Stenson, did you talk to anybody else? Did you go home or did you go out for a lager and say, "Hey, something bizarre happened to me today"? Typically, somebody would, when you recap and reflect on your day.

Mr. Jason Lagerquist: No. I don't recall discussing it with anyone. As I said, once Mr. Stenson spent some time on my machine, he was able to restore it to the normal working order. To the very best of my recollection, there was no information missing; there were no documents missing; there were no emails missing. Everything appeared, at least, to be in normal working order, as far as I was concerned.

Ms. Lisa M. Thompson: Okay. All right. In terms of doing due diligence, though, in your transition, did you feel behooved to tell anyone on your new boss's transition team—that is, the transition team of Kathleen Wynne—that documents or confidential information was accessed by a stranger?

Mr. Jason Lagerquist: No, I did not have that conversation.

Ms. Lisa M. Thompson: Why not?

Mr. Jason Lagerquist: It didn't come up.

Ms. Lisa M. Thompson: Okay. All right. Going back to some other information that we have, you just reinforced the fact of something you said in your opening statement. You said that you have no recollection of docs or emails being missing. When we did some research, there was an article in the Ottawa Citizen, March 27, 2014, by Vito Pilieci, and there's a quote here that involves you. I'll just read it to you.

"It was clear that files have been deleted, system files," said a government staffer named Jason Lagerquist, whose computer was accessed, according to the police filing. "You've ... basically mucked with a computer to the point where it's no longer functioning and the only way to fix that uh is to do what we call a reimage which is basically build the thing from scratch."

Do you recall that? Do you remember seeing that anywhere, that particular quote?

Mr. Jason Lagerquist: Just to be clear, Ms. Thompson, are you attributing that quote to me?

Ms. Lisa M. Thompson: Yes, I'll reread it.

Mr. Jason Lagerquist: Please.

Ms. Lisa M. Thompson: "It was clear that files have been deleted, system files," said a government staffer named Jason Lagerquist.... This was an article in the Ottawa Citizen, dated March 27, 2014, by Vito Pilieci—and I apologize if I'm not saying his last name right.

Mr. Jason Lagerquist: I think there might be an error in that story. I never made such a remark. I have very limited computer knowledge, and much of what you just said went over my head. I believe that quote might be attributed to Mr. Stenson, because I've seen it elsewhere. I'm not sure about that.

Again, in terms of what I was able to observe after Mr. Stenson got me back onto my computer, I noticed no difference in the operation of my computer. I didn't notice that anything was missing. I did not notice that any files had been deleted.

Ms. Lisa M. Thompson: I accept what you said there, Jason—thank you—because, to your point, there was an article published on the same day, March 27, 2014, by Toronto Star reporter Rob Ferguson: "Police Allege Breach of Trust by Former McGuinty Staffer over Computer Access." Essentially, it notes that Ramey's colleague, Jason Lagerquist, "had a similar experience and also called Thom Stenson of the government's IT service."

"There were a few, maybe a couple, in which it was clear that files have been deleted ... you've just basically mucked with a computer to the point where it's no longer functioning ... we were not sure exactly what system files might have been damaged," Stenson told police early in their investigation last July."

It's fair to say that Rob Ferguson, through his article, agrees with you, but—

The Chair (Mr. Shafiq Qaadri): Ms. Thompson, time has stopped, but just to advise you: However reluctant I would be to not let you quote Mr. Rob Ferguson, the quote is itself from the OPP ITO, so we're on a little bit of shaky ground. But I allow you to continue, please.

Ms. Lisa M. Thompson: Okay. Moving forward, clearly Thom Stenson recognized there were files damaged or deleted. What did you do while Thom Stenson was recovering your data on your computer?

Mr. Jason Lagerquist: I don't remember doing anything in particular. I think I remained in the office while he did his work.

Ms. Lisa M. Thompson: So he never once said, "Holy smokes, email files have been deleted or damaged on your computer"?

Mr. Jason Lagerquist: He never said anything to me at that time about anything being deleted or damaged. He was frustrated, but he didn't go into any specifics with me, that I recall.

Ms. Lisa M. Thompson: Interesting. Okay. Moving on in this particular article, it goes on to say: Another IT staffer said that "a Dell 'software tool' had been left on both Ramey and Lagerquist's computers, which Duval suspects might be to 'disguise' data on a hard drive."

After Thom Stenson worked on your computer, did any other glitches or peculiar things happen?

Mr. Jason Lagerquist: No, not that I can recall.

Ms. Lisa M. Thompson: All right. Let's cycle back to when you went over to the Ministry of Agriculture and Food. When Faist accessed your computer, did you already know you were going over to OMAF or did this appointment happen afterwards?

Mr. Jason Lagerquist: I was hired into the office of the Minister of Agriculture and Food at the end of February, so it was afterwards.

Ms. Lisa M. Thompson: Afterwards. Okay. And to the best of your knowledge, you don't think you were moved into that particular role just to kind of keep you close and make sure that they took care of you?

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Mr. Jason Lagerquist: No. I think, in my opening statement, Ms. Thompson, I went over my history at Queen's Park, and I think it shows a pretty steady evolution. I've worked very hard. I'm proud of the work I've done and what I've been able to accomplish and the jobs that I've been able to achieve. In my opinion, and I don't think that there's anything to suggest the contrary, that's merit-based.

Ms. Lisa M. Thompson: Okay. All right. You know a number of the staffers at the PO office as well as the Ministry of Agriculture and Food, right?

Mr. Jason Lagerquist: Yes.

Ms. Lisa M. Thompson: Okay. To your recollection, do you recall when Brianna Ames started in the Premier's office?

Mr. Jason Lagerquist: I don't want to speculate on exact dates. I don't know. I can't say for sure.

Ms. Lisa M. Thompson: Do you have a ballpark? Just give us a ballpark.

Mr. Bob Delaney: Chair, I don't think it's fair—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, point of order.

Mr. Bob Delaney: The witness has responded that he doesn't wish to speculate, and I don't think asking the witness to speculate is fair in the circumstances.

Interjection.

The Chair (Mr. Shafiq Qaadri): Both points are correct. You are allowed to ask, and you are allowed to answer, which is currently what's happening. Please continue.

Ms. Lisa M. Thompson: I'll go back and revisit that. Do you recall, ballparkish, when Brianna Ames started in the Premier's office?

Mr. Jason Lagerquist: I don't recall.

Ms. Lisa M. Thompson: All right. Was it before or after you went to OMAF?

Mr. Jason Lagerquist: I don't know the timeline to be able to make that assessment.

Ms. Lisa M. Thompson: Okay. That's fine. Why do you feel your computer was one of the 24 accessed by the super-password that Peter Faist had been given to use?

Mr. Jason Lagerquist: I don't know. At the time, I assumed it was a natural part of the transition process. Apart from that, I don't know.

Ms. Lisa M. Thompson: Do you think anybody else used your computer when you weren't there?

Mr. Jason Lagerquist: Not that I'm aware of.

Ms. Lisa M. Thompson: Not that you're aware of. Okay. All right. I think we'll leave it at that for now. Thank you, Jason.

Mr. Jason Lagerquist: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Thompson. The PC side cedes its time? You're done?

Ms. Lisa M. Thompson: Yes, we're done.

The Chair (Mr. Shafiq Qaadri): Fair enough. Mr. Tabuns, 10 minutes.

Mr. Peter Tabuns: Thank you, Chair. Mr. Lagerquist, did you provide any records to the archivist when you left your role in the Premier's office?

Mr. Jason Lagerquist: No, I did not.

Mr. Peter Tabuns: Okay. As a ministerial adviser, are 100% of your records transitory?

Mr. Jason Lagerquist: Are 100% of my records transitory?

Mr. Peter Tabuns: And thus deleted.

Mr. Jason Lagerquist: No, no. There are permanent records that should be archived, yes.

Mr. Peter Tabuns: Prior to the training that was asked about earlier, did you have records that you recognized as significant that should be saved?

Mr. Jason Lagerquist: There was less clarity around the rules, I would say. But I probably had too many emails, if anything.

Mr. Peter Tabuns: So in fact, if we had been doing a search on your emails and your records, we would have found a lot of material, as far as I can tell, likely irrelevant to the gas plant matter. But as a ministerial or Premier's adviser, you actually had a lot of substantive records on your computer.

Mr. Jason Lagerquist: I would say, yes.

Mr. Peter Tabuns: Okay. I ask in part because consistently, we've been getting the story that, "Well, so much of this is transitory; one shouldn't be surprised if nothing is left at the end of the day." But my sense is, you have substantial records when you advise the Premier and when you advise a minister. You'll have material on your computer.

Mr. Jason Lagerquist: Yes, I would say that's absolutely correct.

Mr. Peter Tabuns: Okay. You talked to Thom Stenson about your computer. Did you also talk to your supervisor, Dave Gene, to say, "You sent this guy in, and he messed up my computer"?

Mr. Jason Lagerquist: No, I did not.

Mr. Peter Tabuns: Why didn't you?

Mr. Jason Lagerquist: Well, it had been Dave that had said that someone would be coming in to look at the computers. After Mr. Stenson performed his analysis and whatever it is to allow me to log back onto my computer, as I've said, I didn't notice there was anything wrong, anything missing. So, no, I did not speak to Dave.

Mr. Peter Tabuns: And he never came to you and said, "So how did things go with that guy who worked on your computer?"

Mr. Jason Lagerquist: Not that I recall, no.

Mr. Peter Tabuns: He was your supervisor. What was his role in issues management?

Mr. Jason Lagerquist: Dave's.

Mr. Peter Tabuns: Yes.

Mr. Jason Lagerquist: I shouldn't speculate. I don't know.

Mr. Peter Tabuns: He was your supervisor and you didn't know what his job was?

Mr. Jason Lagerquist: I know what his job was with respect to my role.

Mr. Peter Tabuns: Why don't you tell us what that was.

Mr. Jason Lagerquist: He oversaw me as the northern regional desk.

Mr. Peter Tabuns: And so he would ask you for reports?

Mr. Jason Lagerquist: Yes.

Mr. Peter Tabuns: And for briefings?

Mr. Jason Lagerquist: With Dave it was never—not always—formal briefings, but we would chat about issues in the region, absolutely.

Mr. Peter Tabuns: Did he have any role in the transition from one Premier to the next?

Mr. Jason Lagerquist: Not to the best of my knowledge.

Mr. Peter Tabuns: Was it clear to you who had leadership in the transition period, who was actually running things to move from one state to another?

Mr. Jason Lagerquist: Can you describe the timeline in terms of year—

Mr. Peter Tabuns: Well, let's say that from the end of January to the end of February, there were people moving in and people moving out. Who was overseeing this process, as far as you could tell?

Mr. Jason Lagerquist: From my perspective as a staff member in the Premier's office, until February 11, I reported to Dave Gene, and Dalton McGuinty was still the Premier. I can honestly not recall any interaction—for me, personally.

Mr. Peter Tabuns: Yes, that's all I want to know.

Mr. Jason Lagerquist: I can't recall any interaction with anyone who would have been part of the current Premier's transition team. It was very clear that Dalton McGuinty was still the Premier and I reported to Dave.

Mr. Peter Tabuns: And Laura Miller—did she have any role in the transition, that you were aware of?

Mr. Jason Lagerquist: Not that I'm aware of.

Mr. Peter Tabuns: Had the IT department ever done any damage to your computer or cause it to malfunction in the way that it did after Mr. Faist had his opportunity with it?

Mr. Jason Lagerquist: No, I can't say that I recall that happening.

Mr. Peter Tabuns: When Thom Stenson told you that other computers had been messed with, did he say whose computers?

Mr. Jason Lagerquist: No, he didn't specify at that time.

Mr. Peter Tabuns: And no one else in your office talked about Peter Faist, although approximately 24 other people have had the same experience as you.

Mr. Jason Lagerquist: I can recall a couple of conversations where it was discussed that Peter had been in, but I never discussed any of the specifics in terms of what I had experienced or what had been done. I had no reason to suspect that there was anything other than the normal transition process.

Mr. Peter Tabuns: If you didn't have anything to say, did others have things to say to you?

Mr. Jason Lagerquist: Nothing directly relating to what was done or wasn't done to our computers.

Mr. Peter Tabuns: Nothing related to Peter Faist?

Mr. Jason Lagerquist: As I recall, the discussions might have been that this was Peter, Laura's partner. That was the extent of it.

Mr. Peter Tabuns: Were you aware of what work he was doing for the Liberal Party at the time?

Mr. Jason Lagerquist: No, I was not.

Mr. Peter Tabuns: Did anyone else talk to you about the transition, besides Dave Gene?

Mr. Jason Lagerquist: What type of conversation would we have had?

Mr. Peter Tabuns: A conversation about what was going to be happening over the next few weeks. Dave Gene comes and says, "Someone is going to be going at your computer as part of the transition process." Did anyone else talk to you about the transition?

Mr. Jason Lagerquist: No, not that I can recall.

Mr. Peter Tabuns: Mr. Hatfield, you had some questions?

The Chair (Mr. Shafiq Qaadri): Mr. Hatfield.

Mr. Percy Hatfield: Like you, Jason, I guess I'm somewhat computer-illiterate. When I heard that files were deleted and computers were wiped, I figured you'd sign back on and there would be a blank screen and all of your contacts would be gone and all of your emails would be gone. But you're saying that once you got up and running, everything was there.

Mr. Jason Lagerquist: After Mr. Stenson—

Mr. Percy Hatfield: Yes, but I'm just curious. What could have been the specialized deletion, the targeted deletion? Why would they want to get into your computer, to get at what, if all your emails were back up and you signed back on after the IT guy fixed it for you?

Mr. Jason Lagerquist: As it was described to me, it was a normal part of the transition. In terms of anyone

trying to access my computer to get at anything, I can honestly say, I would not have had anything on my computer that, frankly, would have interested anyone.

Mr. Percy Hatfield: What time did you leave the office, on a regular basis?

Mr. Jason Lagerquist: It depended on the day, but typically between 6 and 7.

Mr. Percy Hatfield: So in the evening, if anyone had a password, could they access your computer and have an email exchange, so that if I ever go after an FOI and say Dave Gene's name on there but I don't put your name on there—so if Dave Gene, for example, used your computer at night, would you ever know about it? Maybe that's what was targeted. Maybe they came in specifically because they were trying to get—

Mr. Steven Del Duca: This is speculation.

Mr. Percy Hatfield: Yes, I know it's speculation. I'm just asking. I'm trying to figure out why they would go into your computer in some kind of specialized, targeted deletion and then all your information would be there afterwards.

Mr. Bob Delaney: Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Hatfield, I do, once again—Mr. Delaney, perhaps to anticipate your point of order. Mr. Hatfield, there's a fine line between probing and sort of going down absolutely speculative routes. I'd just like you to be aware of that. But please continue.

Mr. Percy Hatfield: Thank you. Delete Dave Gene's name and just anybody—did you ever come into the office in the morning, turn on your computer and say, "That's not what I remember being there last night"? Or anything in your desk moved and you say, "I don't remember doing that"?

Mr. Jason Lagerquist: No, not that I can recall.

Mr. Percy Hatfield: All right. You've had this training now on deletion, so the next time, if there's ever a transition in Ontario and you're still working in the Premier's office, if that's not speculation, what would you do if somebody came up to you and said, "I'm here to delete your computer emails"? What would you do? What would you say? Who would you say it to?

Mr. Bob Delaney: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Delaney.

Mr. Bob Delaney: The assumption here is that emails were deleted, and nowhere in the testimony has Mr. Lagerquist suggested that such a thing has happened.

Mr. Percy Hatfield: Thank you, Chair. Let me move on—

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, your point is—just a moment, Mr. Hatfield. The point and the direction is well taken. Mr. Hatfield, in terms of protocol of committee, we usually are advising our members to ask factual questions.

Please continue. One minute.

Mr. Percy Hatfield: Thank you. I have one minute. I'll close off with the question—you raised the issue of merit. Your occupation, your employment is merit. What are you currently earning, and how does that compare to what you were earning in your previous job—

Mr. Bob Delaney: Chair, that has no relationship with our—

The Chair (Mr. Shafiq Qaadri): Mr. Hatfield, with respect not only—thank you, Mr. Delaney. With respect to the witness, (a) the question is not particularly material to the mandate; and (b) if you would allow us to protect the witness's privacy, I think that would be in order. So I'm not going to allow that question.

Please continue. You have 45 seconds left.

Mr. Percy Hatfield: Okay. I mean, it was raised earlier: Why are you around? Were they keeping you close to home, sort of thing, because of this thing coming up? The witness testified that he was merit-based. I was just trying to figure out if there's any evidence to that effect. But if that's the case, that's the case.

Thank you for coming today, Jason. I thought you answered to the best of your ability the questions that were posed to you. Thank you very much.

Mr. Jason Lagerquist: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hatfield. Back to the government side. Just for, perhaps, the committee's edification, salaries over \$100,000 annually are public domain, just to let you know. In any case, go ahead, Mr. Delaney.

Mr. Bob Delaney: Chair, I think we have exhausted this witness's contribution to our committee, and the government has no further questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side: Ms. Thompson, 10 minutes.

Ms. Lisa M. Thompson: No, we're done as well. We concur with Mr. Delaney.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Thompson. Thanks to you, Mr. Lagerquist, for your presence. You are officially dismissed.

We have a subcommittee meeting, but committee is officially adjourned. Thank you, colleagues.

The committee adjourned at 1504.

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